145-141

# RECORD, CASE No. 13,463.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 310.

D. C. RUGG, APPELLANT,

*vs.*

WILLIAM H. GAINES AND MARIA GAINES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED JANUARY 2, 1889.

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1 Be it remembered that on the 23rd day of May, 1884, came into the office of the clerk of the circuit court of the United States for the eastern district of Arkansas William H. Gaines and wife, by M. W. Benjamin and R. G. Davies, Esqs., their solicitors, and filed therein, on the chancery side of said court, their bill of complaint against Henry A. Booth *et al.*; which bill is as follows:

United States Circuit Court, Eastern District of Arkansas, October Term Thereof, 1884.

WILLIAM H. GAINES and MARIA GAINES, His Wife, Plaintiffs,
*vs.*
—— BELL and —— MCCARTY, Partners as Bell & McCarty; HENRY A. BOOTH, DE WITT C. RUGG, Defendants.

William H. Gaines and Maria Gaines, his wife, bring this suit against —— Bell and —— McCarty, partners as Bell & McCarty, and Henry A. Booth and De Witt C. Rugg, and for cause of action allege that in the year 1851, in pursuance of the instruction of the Secretary of the Interior, plaintiff Maria Gaines, Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, entered, under the pre-emption laws of the United States, the southwest quarter of section thirty-three, in township two (2) south, range nineteen (19) west, for which they paid the United States Government two hundred dollars, which was advanced and paid by plaintiff Wm. H. Gaines, and which money the United States still retains.

At the time of said entry a small portion of said land was occupied by Mrs. Lydia Belding, widow of Ludovicus Belding, and the portion of said lands for which this suit is brought was occu-
2 pied by —— ——, and in — William H. Gaines, Maria Gaines, Albert Belding, Henry Belding, and George Belding, under the supervision and control of William H. Gaines, brought suit in the Hot Springs circuit court against —— —— and recovered judgment for the possession of said land, which judgment was afterwards affirmed by the supreme court of the State of Arkansas and by the Supreme Court of the United States, and on the — day of ——, 1856, Wm. H. Gaines was, by the sheriff of Hot Springs county, put into the possession of said property by virtue of a writ of possession issued upon the judgment of said Hot Springs circuit court in obedience to the mandates of said supreme courts, both of the State and of the United States, and said plaintiffs, Wm. H. Gaines and Maria Gaines, his wife, remained in peaceable and quiet possession of said property until the 1st day of June, 1876, when they were dispossessed of said property by a receiver appointed by the Court of Claims of the United States under an act of Congress entitled "An act in relation to the Hot Springs reservation, in Arkansas," approved June 11th, 1870.

Plaintiffs entered into possession by virtue of said entry and by virtue of the decisions of said State and United States supreme courts and the writs of possession issued in pursuance of said judgments, and continued in possession for a period of about twenty years, until

the Supreme Court of the United States, in a suit to determine to whom the patent should issue, decided that said lands were not subject to pre-emption or entry, and that no claimant was entitled to a patent, but the same was still the property of the United States, which decision was rendered Apri' 24th, 1876. Plaintiffs during said twenty years paid taxes on said property and fenced and built houses on the same and otherwise improved the same. On the 1st day of April, 1874, plaintiff Wm. H. Gaines leased a lot of ground, which has since been laid off into lots and blocks by the Hot Springs Commission in accordance with an act of Congress and now *now* is known as lot ten (10), in block seventy-seven (77), to Bell & McCarty, which lease was for the term of one year, to be renewed at the election of the lessees from year to year until the title to the Hot Springs quarter section of land was settled, for an annual rent of —, payable in monthly installments of —.

Said lease also provided that all buildings and improvements erected on said lot by the lessee- might be removed therefrom during the continuance of the lease or within thirty days thereafter, but that no buildings or improvements erected could be removed while said rent or any part thereof remained due and unpaid. It also provided that the lessor should have a lien on all buildings and improvements to secure the rent, a copy of which is hereto attached in Exhibit "A" and made part hereof.

Said lessees took possession of said land under and by virtue of said lease only, and in no other way whatever, and they —— —— and — assigns occupied the same under said lease until the first day of June, 1876; that on the 24th day of April, 1876, said lessees and their assigns owed the lessor for rent the sum of twenty-three dollars and fifty-nine cents ($23.59).

Said lessees and their assigns failed to remove said buildings and improvements erected by them at any time during or within thirty days after the expiration of the lease, and by virtue of the provisions of the lease said buildings and improvements erected by said lessees and their assigns became the buildings and improvements of Wm. H. Gaines.

That on the 23rd day of September, 1876, —— Bell, of the firm of Bell and McCarty, sold and transferred to Henry A. Booth all their right, title, and claim to said premises, he, Henry A. Booth, well knowing before said transfer all the terms and conditions of said lease, which transfer was made without the knowledge or consent of the plaintiff.

That on the 25th day of August, 1879, while said claim was pending before said Hot Springs Commission and before any award was made, Henry A. Booth sold and transferred his claim to said lot to De Witt C. Rugg, he well knowing before the transfer all the terms and conditions of said lease and the rights of plaintiffs to said lot, which transfer was made without the knowledge or consent of the plaintiffs.

Plaintiffs, by arrangement with George, Henry, and Albert Belding, having become the owner- of said claim, aver that in less than six calendar months after the first sitting of the Hot Springs Com-

mission, under the act of Congress of the United States entitled "An act in relation to the Hot Springs reservation, in the State of Arkansas," approved March 3rd, 1877, they filed their claim before said commission to purchase said lot, and that Henry A. Booth, who had acquired all the rights he had September 23rd, 1876, filed a like claim, and upon the hearing of said claims they were consolidated by said commission for the purpose of hearing the testimony; and said petitions filed and the testimony taken before said commission clearly show that Henry A. Booth had purchased his claim September 23rd, 1876, and had acquired his possession in no other way but by said lease made by plaintiffs Wm. H. Gaines to said Bell & McCarty, as will more fully appear from a complete copy of the petition, testimony, and record entries in said claims filed herewith and marked Exhibit "A" and made part hereof; and notwithstanding that said petition and testimony showed that defendant Henry A. Booth had acquired his only right September 23rd, 1876, and acquired possession only by virtue of said lease, still said commission misconstrued the law applicable to that state of facts and awarded the right to purchase said lot to defendant Henry A. Booth, and since said award said defendant has purchased said lot from the United States and received a patent therefor, and on account of said misconstruction of the law as applied to the facts before said commission the right to purchase said lots, which in law, equity, and good conscience should have been awarded to plaintiffs, was by said misconstruction of the law illegally and wrongfully awarded to defendant Henry A. Booth by said Hot Springs Commission.

Plaintiffs aver that as defendants have never had any other right or title to said lot or to the possession thereof than that which they derived from said lease and under covenants to restore possession — Wm. H. Gaines, that said defendants should be held to hold said lots as trustee- for the use and benefit of plaintiffs.

Plaintiffs offer to pay any sum of money that may be found due to the defendants or either of them by reason of any money paid to the United States for the purchase of said lots, and to do all other acts which may be found to be just and equitable. Plaintiffs aver the property herein sued for is worth more than five hundred dollars, and that this cause of action arises wholly under the law of the United States. Plaintiffs ask that defendants be required to answer, but not under oath.

And they pray that an account may be taken of the state of accounts between themselves or either of them and said defendants severally; that they may be allowed reasonable rent for the occupancy of the said premises; that defendants may be decreed to hold said lots as trustees for the plaintiffs and convey the same to the plaintiffs, and that they may have such other relief as may be equitable.

M. W. BENJAMIN,
R. G. DAVIES, *Solicitors.*

Good for costs.
M. W. BENJAMIN.

(Endorsed:) Filed and writ issued May 23rd, 1884. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

UNITED STATES OF AMERICA, }
*Eastern District of Arkansas.* }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 14th day of April, anno Domini one
6 thousand eight hundred and eighty-four, at the United States court-room, in the city of Little Rock, Arkansas, the Hon. David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On July 7th, 1884:

647. Comes the defendant De Witt C. Rugg, by Geo. W. Murphy, his solicitor, and enters his appearance herein.

UNITED STATES OF AMERICA, }
*Eastern District of Arkansas.* }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 27th day of October, anno Domini one thousand eight hundred and eighty-four, at the United States court-room, in the city of Little Rock, Arkansas, the Hon. David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On October 29th, 1884:

No. 647. Come- the defendants, by G. W. Murphy, Esq., *their* solicitor, and on his motion leave is given him until the 1st of December to file answer.

And on December 1st, 1884, as follows:

No. 647. The plaintiffs, by M. W. Benjamin, Esq., their solicitor, ask leave to amend their complaint by interlineation, which is granted; and thereupon said amendments are made.

7 And on December 6th, 1884, as follows:

No. 647. Comes the defendant D. C. Rugg, by G. W. Murphy, Esq., his solicitor, and files herein his answer; which answer is as follows:

United States Circuit Court, Eastern District of Arkansas.

WM. H. GAINES and MARIA GAINES, Plaintiffs, }
*vs.* }
BELL and MCCARTHY and HENRY A. BOOTH and DE WITT C. RUGG, Defendants. }

The separate answer of Dewitt C. Rugg, one of the defendants, to the bill of complaint of the plaintiffs, William H. Gaines and Maria Gaines.

This defendant, saving and reserving all manner of exception and

advantage to the many errors and insufficiencies of said bill of complaint, for answer thereto and to every part thereof as he is advised *are* material says—

That the allegations thereof to the effect that plaintiff Maria and Albert Belding, George Belding, and Henry Belding, heirs and representatives of Ludovicus Belding, entered, in the year 1851, under the pre-emption law of the United States, the southwest quarter of section thirty-three, in township two south, range nineteen west; that they paid the United States $200.00 therefor; that they recovered judgment for it or for the land for which this suit is brought; that plaintiff Wm. H. was put in possession of it in 1856 by the sheriff of Hot Springs; that plaintiff entered into possession of it under the alleged entry and judgments; that they continued in possession of it for about twenty years; that they continued in possession of it until the 1st day of June, 1876; that they fenced
8 it; that they built houses on it; that they improved it; that they paid taxes on it; that on the 24th of April, 1876, defendants Bell & McCarty and their assigns owed plaintiff William —— rent for the land, for which this suit is brought; that they failed to remove their improvements from said land; that said improvements became the improvements and buildings of plaintiff William H.; that defendant Henry A. Booth when he purchased said land knew of the lease of said plaintiff to defendants Bell & McCarty; that he knew then of plaintiffs' claim; that this defendant when he purchased said land from defendant Booth knew of said lease; that he then knew of plaintiffs' claim; that the claim of plaintiffs and said Booth to said lot *were* then pending; that he made said purchase without the knowledge of plaintiffs; that the possession of said land was derived by defendants through plaintiff William H. or through a lease from him; that the testimony taken before said Hot Springs commissioners on the hearing of the petitions of plaintiffs and of said Booth for said land, and the petitions, showed that defendants acquired their possession of said land from plaintiff William H. and derived title through him, and that plaintiffs were entitled to said land; that the said commissioners misconstrued the law; that the award of said land to defendant Booth was wrongful; that this defendant should be held to hold said land in trust for plaintiffs, are all false.

As to the alleged lease, this defendant, further answering, says that, from the most reliable information he has been able to obtain, he believes that said defendants Bell and McCarty accepted, on or about the date mentioned in the complaint, a formal lease for the land now known and designated as lot numbered 10, in block 77, the same land for which this suit is brought, from the plaintiff Wm. H.; that it contained covenants on the part of said plaintiff whereby all buildings and improvements erected by them on said lot should be and remain their property, and whereby they were to have the right to remove them at any time during the term or within thirty days after its expiration, and also containing a covenant of renewal from year to year; that it was renewed from year to year and was, as be-

tween said plaintiff and defendants Bell & McCarty and Booth,
9 if not void from its inception, in existence and force on the 24th of April, 1876, and to the 1st day of June, 1876, and that the terms as last renewed did not expire by limitation until long after the 1st day of June, 1876, when the receiver appointed by the Court of Claims of the United States took possession of said lot and all the improvements thereon; that said lease contained no covenant or clause of forfeiture; that defendants were in no default as to payment of the rent or otherwise; that when it was ascertained that the Supreme Court of the United States had decided adversely to plaintiffs and said Belding heirs, said plaintiff William ignored the relation of landlord and tenant, refused to keep said covenant that said defendants should have the right to remove their said improvements, but violated the same, and urged said receive- to take possession of said lot and improvements, which he did on the first day of June, 1876; that said defendants, Bell & McCarty and Booth, had, prior to said 24th of April, 1876, erected upon said lot houses and improvements worth at least $2,500.00, and that said defendant Booth had then become the owner of them by purchase, and that by the breach of said covenant he was deprived of the right to remove them; that neither of plaintiffs at the date of said lease had any title to or possession of said lot, and that it was a void contract, having for its object the violation of the right of the United States by trespassing on said lot. He says that he has never seen any lease executed or that was made between plaintiff Wm. H. and said Bell and Booth, and that, the alleged lease never having been in fact filed, although referred to in the complaint as an exhibit, he does not know of his own knowledge whether it was made or contained the covenants set forth in the complaint in excess of those hereinabove mentioned; but, from information as aforesaid, he says he believes it did not contain them and was not made as charged, but that the one that was made is in the possession of plaintiff. As to the alleged entry and judgment, this defendant says that said quarter
10 section was not subject to entry in 1851, and that neither the said Ludovicus nor the said plaintiff Maria and the said Albert, Henry, and George had ever any right to enter said quarter section; that the only possession they had ever had upon it was as tenant of one John Percifal and his assigns; that they nevertheless, by persistent efforts and by promising never to demand a patent, procured through the land office a void writing in the form of a certificate of entry of said land, which was the only entry of it ever made by them; that upon this void certificate they recovered against John C. Hale and others who occupied parts of said quarter section, but not said lot, the alleged judgment, but that they were in a suit instituted by said Hale in the same court perpetually enjoined and restrained from enforcing it because of the fraudulent character of said certificate by a decree, which was affirmed on appeal by the supreme court of Arkansas and of the United States.

This defendant, further answering, admits that the plaintiffs filed before the Hot Springs commissioners, within six months from their first sitting, a claim to said lot, and that defendant Booth filed

before them a like claim, and that said claims were by them consolidated, as stated in the complaint; and he says that the claim of plaintiffs was based upon said void entry and judgment and a lease containing the covenants hereinbefore set forth coupled with an allegation in said claim that the buildings and improvements upon said lot, all of which had been erected and made by said Bell & McCarty and Booth, had been forfeited to them; that the claim of said defendant Booth was based upon said improvements, which it described and to which *he* asserted ownership; that upon the hearing plaintiffs introduced no evidence tending to show title in them by forfeiture or otherwise; that the evidence upon said hearing showed conclusively that defendant Booth was the owner and occupant of said improvements, and that said commissioners accordingly awarded to him, as they should have done, the right to purchase said lot from the United States.

11 This defendant, further answering, says that on the 25th day of August, 1874, after the right to purchase said lot had in fact been awarded to defendant Booth, he, this defendant, in utter ignorance of the alleged lease and of the alleged claim, right, and equity of plaintiffs, in good faith bought said lot from him and paid him therefor the sum of $1,800.00, the full consideration and price of said lot, and obtained from him the possession of it and a deed to it, which fact and the subsequent purchase from the United States *he* urges in bar of this suit; that said Booth was then in the peaceable possession of it and made to this defendant a deed conveying it to him, a copy of which is annexed to this answer as Exhibit "A," and that this defendant has ever since *since* then been in the possession of it; that plaintiffs at the time knew of said purchase, but gave this defendant no notice of the alleged lease nor of their claim; that he saw them and conversed with them frequently between October, 1881, — when he in total ignorance of the alleged lease and of plaintiffs' alleged rights and claim and in good faith purchased said lot in fee from the United States in the name of defendant Booth, but for his own benefit and use, and paid the price for it; that he never knew of plaintiffs' claim nor of any lease until the institution of this suit; that from the date of his purchase from the defendant Booth to the time of his purchase from the United States plaintiffs knew that he intended to make and would make said latter purchase, and yet, although frequently in his company, gave him no notice of their claim, but knowingly stood by and permitted him to make said purchase in complete ignorance of their claim and of the matters which they now allege; that plaintiff William H. frequently between those dates expressed to him his approbation of the acts and awards of said commissioners; that he, this defendant, knew nothing of plaintiffs' claim until after he had obtained from the United States for his own benefit in the name of defendant Booth a patent for the land, a copy of which he annexes to this answer as Exhibit "B;" and he prays, on account of said facts touching said purchases, the same advantage and protection

12 as though he had formally pleaded them in law.

This defendant further states that from the 1st day of June,

1876, to the present time he and those through and under whom he claims and derives title to said lot have, adversely to plaintiffs and under claim of right, held open and notorious possession of it; that from said 1st day of June, 1876, to the date of the institution of this suit more than seven years elapsed, and that from the date of said award to said institution more than four years elapsed, *covering* all of which matters and lapse of time he prays the same benefit and advantage as though he had set them forth in a formal plea of the statute of limitations.

This defendant further says that said award and all other awards made by said commissioners were, on 16th day of June, 1880, by an act of Congress entitled An act for the establishment of titles in Hot Springs and for other purposes, confirmed.

This defendant further says that he has and owns improvements upon said lot which he bought and erected to the value of $4,000.00, for which he prays compensation in case he be decreed to convey said lot to plaintiffs; and this defendant, as to any matters or material allegations that may be found in said bill of complaint and not herein expressly admitted or denied, says they are untrue

This defendant, having answered fully, prays that the bill of complaint be dismissed.

G. W. MURPHY,
*Counsel for Def't D. C. Rugg.*

EXHIBIT "B."

*Certificate No.* 439.

United States of America to all to whom these presents shall come, Greeting:

13 Whereas by virtue of the acts of Congress approved March 3rd, 1877, December 16th, 1878, and June 16th, 1880, there has been deposited in the General Land Office of the United States a certificate of the register of the land office at Little Rock, Arkansas, whereby it appears that full payment has been made by Henry A. Booth, of Garland county, Arkansas, and his claim thereby established and duly consummated in conformity to law for the lot numbered 10, in block 77, of the Hot Springs reservation, in Arkansas, according to the official plat of said reservation returned to the General Land Office by the commissioners appointed under the acts of Congress above referred to:

Now know ye that there is therefore granted by the United States unto the said Henry A. Booth the lot or tract of land above described; to have and to hold the said lot or tract of land, with the appurtenances thereof, unto the said Henry A. Booth and to his heirs and assigns forever, subject to the proviso *formed* in the act of December 16th, 1878, in the following words, to wit: "Provided that all titles given or to be given by the United States shall explicitly exclude the right to the purchaser of the land, his heirs or assigns, from ever boring thereon for hot water."

In testimony whereof I, Chester A. Arthur, President of the

United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the 13th day of March, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundredth and sixth.

By the President:

CHESTER A. ARTHUR,
By W. CROOK, *Secretary.*

EXHIBIT "A."

*Quitclaim Deed.*

Booth to Rugg.

Know all men by these presents that I, H. A. Booth, by my attorney, J. B. Roe, as shown by power of attorney, dated July 5th, 1879, and recorded in Record Book "D" of Deeds, on folios 194 and 195, for and in consideration of the sum of eighteen hundred dollars to me in hand paid by D. C. Rugg, do hereby grant, sell, and quitclaim unto the said D. C. Rugg and unto his heirs and assigns forever the following lands, lying in the county of Garland and State of Arkansas, to wit, commencing at a point on Valley street at the northeast corner of said lot, thence on a line bearing west ninety (90) feet; thence south twenty-five (25) feet; thence east ninety (90) feet; thence north twenty-five (25) feet to the place of beginning, being bounded on the north by the claim of S. J. Lewis, on the west by the claim of Sumpter, on the south by the alley, on the east by Valley street, lying and being in S. W. — S. W. — sec. 33, T. 2 S., R. 19 west, said land being more fully described in my petition, No. 248, now on file in the office of the Hot Springs commissioners:

14

To have and to hold the same unto the said D. C. Rugg and unto his heirs and assigns forever, with all appurtenances thereto belonging, together with all rights I have or may have before the United States Hot Springs commissioners, and I hereby agree to transfer to the said D. C. Rugg any certificate of award giving me the right to purchase said lot from the United States Government.

Witness my hand and seal on this 25th day of August, 1879.

H. A. BOOTH, [SEAL.]
By JOHN B. ROE,
*His Attorney-in-Fact.*

*Acknowledgment.*

STATE OF ARKANSAS, } ss:
*County of Garland,* }

Be it remembered that on this dey came before the undersigned, a notary public within and for the county aforesaid, duly com-

missioned and acting, H. A. Booth, by his attorney, J. B. Roe, to me well known as the grantor in the foregoing deed, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth.

Witness my hand and seal as such notary public on the 25th day of August, 1879.

[SEAL.] JAMES G. ALLEN,
*Notary Public.*

Filed for record this 26th day of August, 1879, at 1 o'clock p. m.
J. H. LAW, *Clerk.*

STATE OF ARKANSAS, } *ss:*
*County of Garland,* }

I, Z. Beldin, clerk of the circuit court and *ex officio* recorder of Garland county, Arkansas, do hereby certify that the annexed and foregoing contains a true and complete copy of deed from H. A. Booth, by his attorney, J. B. Roe, to D. C. Rugg, as appears from a comparison with the original recorded in Book D, page 306, in my office, of records of deeds and mortgages.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 22nd day of October, 1885.

[SEAL.] ZIBA BELDIN, *Clerk,*
By EDWARD REED, *D. C.*

*Power of Attorney.*

H. A. Booth
to
John B. Roe.

Know all men by these presents that I, H. A. Booth, of the township of Bradford, county of McKean and State of Pennsylvania, do make, constitute, and appoint J. B. Roe, of the city of Hot Springs, the county of Garland, State of Arkansas, my true and lawful attorney for me and in my name and place to grant, bargain, and sell all and any of lands and estate, together with the appurtenances, with all right, title, and interest therein, with such person or persons and for such price or prices as he shall think proper, situate in the State of Arkansas, county of Garland, in said State, and also for me and in my name and place and as my proper act and deed to sign, seal, and deliver and acknowledge all such deed or deeds of conveyance as shall be necessary for the absolute granting and assigning of the premises to the purchaser or purchasers; also giving him full power to receive the considerations and prices for which said land may be sold and appurtenances for, and to give receipts for and in my name and stead.

Witness my hand and seal given the 18th day of June, A. D. 1879, in presence of Eli Kondig.

H. A. BOOTH.

*Acknowledgment.*

Before me, the subscribing, a notary public of the county of McKean, State of Pennsylvania, personally appeared the said H. A. Booth, who in due form of law acknowledges the above power of attorney to be his own act and deed, to the end that the same may be recorded as such, and that the above has his signature.

[SEAL.] O. H. COTTON,
*Notary Public.*

STATE OF ARKANSAS, }
*County of Garland,* } *ss:*

I, Z. Beldin, clerk of the circuit court and *ex officio* recorder of Garland county, Arkansas, do hereby certify that the annexed and foregoing contain a true and complete copy of power of attorney from H. A. Booth to John B. Roe, therein set forth, as appears from a comparison with the original, recorded in Book D, pages 194, 195, in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 22nd day of October, 1885.

ZEBA BELDIN, *Clerk,*
[SEAL.] By EDWARD REED, *D. C.*

(Endorsed:) Filed December 6th, 1884. Ralph L. Goodrich, clerk.

An- on January 5th, 1885, the following proceedings were had:

17 No. 647. Come the complainants, by M. W. Benjamin and R. G. Davies, Esqs., their solicitors, and file herein their replication to defendant's answer; which replication is as follows:

U. S. Circuit Court, East. Dist. of Arkansas, October Term, 1884.

GAINES and WIFE }
*vs.*
BOOTH *et al.* }

The said plaintiffs say their bill is true, and that the answer of the defendants as set forth *are* not true, and this they are ready to verify.

M. W. BENJAMIN,
R. G. DAVIES, *Solicitors.*

(Endorsed:) Filed January 5th, 1885. Ralph L. Goodrich, clerk.

UNITED STATES OF AMERICA, }
*Eastern District of Arkansas.* }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas begun and holden on Monday, the 12th day of April, anno Domini one thousand eight hundred and eighty-six, at the United States court-room, in

the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On April 20th, 1886:

No. 647. Come the complainants, by Benjamin and Davies, their solicitors, and come the defendants, by —— ——, their solicitors, and this cause is submitted to the court upon the pleadings and evidence, and by agreement of parties it is ordered that the complainants have 15 days and the defendants 30 days thereafter in which to file abstracts, and thereafter the complainants to have 10 days and the defendants 10 days thereafter in which to file briefs, and that 5 days thereafter be given for reply. It is further ordered that each party serve upon the opposing party copies of abstracts and briefs.

UNITED STATES OF AMERICA, }
*Eastern District of Arkansas.* }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas begun and holden on Monday, the 25*tt* day of October, anno Domini one thousand eight hundred and eighty-six, at the United States court-room, in the city of Little Rock, Arkansas, the Hon. David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On November 10th, 1886:

No. 647. Come the complainants, by M. W. Benjamin and R. G. Davies, Esqs., their solicitors, and on their motion it is ordered that this cause be dismissed as to the defendants Bell and McCarty and Henry A. Booth at complainants' costs.

And on the same day as follows:

No. 647. Decree.—Now, on this day, this cause coming on for final hearing upon the complaint of plaintiffs, the answer of
19 the defendant De Witt C. Rugg, and the replication to said answer and the evidence, and the court having heard the argument of counsel, and being now sufficiently advised in the matter as to the proper decree to render herein, the court finds that the board of commissioners mentioned in said complaint, by error and mistake of law, awarded the right to purchase lot ten, in block seventy-seven, of the Hot Springs reservation, in the city of Hot Springs, Garland county, Arkansas, to Henry A. Booth, the defendant hereinabove named, and issued to him a certificate of award, and, in accordance with said erroneous ruling, a patent has been issued improperly to said Henry A. Booth, who transferred said lot to De Witt C. Rugg on the 25th of August, 1879, and the court is of the opinion that said defendant, D. C. Rugg, holds said patent in trust, as trustee, for the sole use of said William H. Gaines and Maria Gaines.

It is therefore considered, ordered, and decreed that all right,

title, interest, and estate of the said defendant, D. C. Rugg, in and to said tract of land be, and the same is hereby, divested out of the said defendant, D. C. Rugg, and vested in said plaintiffs and their heirs and assigns forever, and that said defendant, D. C. Rugg, do make, seal, and deliver a deed conveying said lot to said plaintiffs, their heirs and assigns forever; and said defendant prays an appeal, which is by the court granted.

And it is further ordered that this cause be referred to N. W. Cox, Esq., special master of this court, who is directed to ascertain and report to this court at its next term:

First. The value of the rent of said lot since the award of said commissioners.

Second. What amount of taxes has been paid on said lot by said defendants since the date of said award.

Third. The value of the improvements made upon said lot by the defendants before and since the award of said commissioners, and report the same separately.

And the said master may examine witnesses touching said
20 matter, and shall reduce the same to writing and report their testimony so taken to this court.

And it is further ordered that the plaintiffs do have and recover of D. C. Ruggs all the costs of suit herein.

And it is further ordered that all questions of law touching the several matters herein referred to the master be, and the same are, reserved until the coming in of his report, and this case is reserved for further directions.

And the court finds from the testimony adduced that the lot in controversy is at this date of the value of six thousand dollars.

And on November 11th, 1886, as follows:

No. 647. Come the complainants, by M. W. Benjamin, Esq., their solicitor, and come the defendants, by G. W. Murphy, Esq., their solicitors, and file herein their agreement as to certified copies of deeds and evidence; which agreement is as follows:

In U. S. Circuit Court, Eastern District of Arkansas.

WM. H. GAINES and MARIA GAINES
*vs.*
D. C. RUGG *et al.* } 647.

It is hereby agreed that on the hearing of the above causes all certified copies of deeds of conveyance of any of the lots embraced in any of said causes may be read in evidence by any or either of the parties in lieu of the originals and without further proof; that all copies of leases filed before the Hot Springs commissioners and all copies transcribed in the evidence certified by the Commissioner of the General Land Office of the United States and
21 the evidence as certified may be read in evidence on the hearing of any of the above causes, as far as applicable and relevant, by any of the parties concerned, whether filed in the several cases or not, and that said certified copies contain all the evidence taken

before the commission in regard to property sued for, except B. U. Goode claims that his evidence is not correctly reported; otherwise all right.

M. W. BENJAMIN,
*Att'y for Plaintiffs.*
G. W. MURPHY,
*Att'y for Defendants R. E. Allen, D. C. Rugg, Thos. Howard, Harris Toney, J. Fenton, Chas. N. Rix, B. W. Goode, Charlotte Cohn, Henry Cohn, John Adamson.*

(Endorsed:) Filed November 11th, 1886. Ralph L. Goodrich, clerk.

And on November 16th, 1886, as follows:

No. 647. Comes the defendant D. C. Rugg, by G. W. Murphy, Esq., his solicitor, and files herein his bond in the sum of one thousand —, with W. J. Little as surety thereto, which is approved by the court; which bond is as follows:

In the Circuit Court of the United States for the Eastern District of Arkansas.

Wm. H. Gaines and Maria Gaines, Pl'ffs, *vs.* H. A. Booth, D. C. Rugg, *et al.*, Def'ts. } Bond.

We, D. C. Rugg, as principal, and William J. Little, as sur-ty, are held and firmly bound unto the plaintiffs, William H. Gaines and Maria Gaines, in the sum of one thousand dollars; for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly hereb-.

Signed and sealed this 15th day of November, 1886.

Conditioned as follows: Whereas the above-bounden D. C. Rugg, who has prayed an appeal from the decree rendered against him in the above-entitled cause by the circuit court of the United States for the eastern district of Arkansas at the fall term, 1886, divesting him of all his right, title, interest, and estate in and to lot numbered ten, in block seventy-seven, of the Hot Springs reservation, in the city of Hot Springs, Garland county, Arkansas, and vesting the same in the plaintiffs, William H. Gaines and Maria Gaines, and *t*heir heirs and assigns forever, and requiring him to make, seal, and deliver a deed conveying *s*aid lot to them, desires to retain the possession and control of said lot pending further proceedings, which he is permitted to do on giving bond, with good security, to the plaintiffs in the sum of one thousand dollars, conditioned that he will pay them all damages they may sustain thereby in case the decree shall be affirmed or the appeal dismissed:

Therefore, if said appeal be prosecuted to a hearing and the decree reversed, or if the said Rugg shall pay to the said plaintiffs such damages as they may sustain by reason of such his retention of the

possession of said lot, this bond shall become void, but otherwise shall remain in full force.

D. C. RUGG. [SEAL.]
WM. J. LITTLE. [SEAL.]

William J. Little states that he is a resident of the State of Arkansas; that he is worth five thousand dollars beyond the amount of his debts, liabilities, and exemptions, and has property in said State subject to execution of the value of five thousand dollars.

WM. J. LITTLE.

Subscribed and sworn to before me this 15th day of November, 1886.

CHAS. N. RIX,
*Notary Public.*

(Endorsed:) Approved by order of the court and filed November 17th, 1886. Ralph L. Goodrich, clerk.

23 And on April 9th, 1887, as follows:

647. Comes N. W. Cox, Esq., master herein, and files his report; which report is as follows:

WM. H. GAINES and WIFE
*vs.*
D. C. RUGG *et al.* } 647.

Date of award, December 1st, 1879; date of filing bill, May 23rd, 1884. Lot 10, block 77.

| | | |
|---|---|---|
| Rent, as per lease, $200 per annum and interest | | $1,016 68 |
| " from filing bill to master's report and interest (lot 21 feet) | | 945 85 |
| | | $1,962 23 |
| By taxes and interest, as per report | $489 93 | |
| " am't paid U. S. Goverment and interest | 201 28 | |
| " present value of improvements | 100 00 | |
| | | 1,391 21 |
| Diff. | | $571 02 |

N. W. COX,
*Special Master.*

In the United States Circuit Court, Eastern District of Arkansas.

WM. H. GAINES and MARIA GAINES, His Wife, Pl'ffs,
*vs.*
H. A. BOOTH and D. C. RUGG *et al.*, Defendt's. } 647.

To the hon. U. S. circuit court for the eastern district of Arkansas:

In obedience to the decree of this hon. court made in the above-entitled cause November 10th, 1886, as special master ap-

pointed thereunder, I have made examination of the matters
24 and things therein directed. After the examination of the witnesses presented by the parties, whose testimony I file herewith, I find—

| | | |
|---|---|---|
| First. That the rental value of lot ten, in block seventy-seven, the lot in controversy, without improvements, *to be* $12.50 per front foot per annum; that the frontage of said lot is 24 feet; that the time is 7 years and 4 months from the date of award to first day of the April term, 1887, of this court, to which — this report is made, amounting to | | $2,200 00 |
| Interest at 6 % (6 yrs. and 4 mos.) | | 418 00 |
| | | $2,618 00 |
| That the rental value of said lot, with improvements, is $400 per annum, 7 years and 4 mos. | | 2,933 33 |
| Second. That the defendant Rugg paid taxes, including sewer and sidewalk assessments | $482 40 | |
| Less discount on $372.40 at 13% | 49 40 | 433 00 |
| Interest on same, 6% | | 56 93 |
| | | 489 93 |
| That the amount paid the U. S. Gov't was | | 148 00 |
| Int. from Jan. 1, '82, 6% | | 53 28 |
| | | 201 28 |
| Third. That the value of the improvements upon said lot was | | 800 00 |

The time of the making of said improvements was not proved, but, from information, I am satisfied that they were made before the award.

That the present value of said improvements is 700 00

Respectfully submitted.

N. W. COX,
*Special Master.*

See case 644 as to agreement as to depositions to be read in this case.

25 Depositions of witnesses, taken on the 23rd day of February, 1887, at the city of Hot Springs, before N. W Cox, master, appointed by the U. S. circuit court for the eastern district of Arkansas, in the case of William H. Gaines and Maria Gaines against D. C. Rugg *et al.*, in accordance with the decree of said court.

Present: The plaintiffs, by R. G. Davies, Esq., their attorney, and the defendants, by G. W. Murphy, Esq., their attorney.

ALBERT B. GAINES, being introduced upon the part of the plaintiff and duly sworn, deposes and says:

Ques. 1. State your name, age, and residence.

Ans. My name is Albert B. Gaines; age, 29 years; residence, Hot Springs, Arkansas.

Ques. 2. Are you familiar with the rental value of lot ten, in block 77, in the city of Hot Springs, since the date of the Hot Springs Commission? And, if so, state what has been a reasonable rental value of said lot, both as to ground rent per front foot and also with the improvements thereon, since the award of the Hot Springs Commission.

(Objected to, as far as it calls for the rental value of the lot with the improvements, by the defendants' attorney.)

Ans. I am familiar with the rental value of property in that vicinity. I have not rented said property since the award, though I did before that time. I have been renting property in that vicinity ever since 1878 up to the present time. The ground rent per front foot has been and is worth $15 per annum. This ground rented prior to 1879, I think, for about $10 per front foot per annum. Since that time the commercial center of business for the city has been centered in that locality and has materially enhanced the value of the ground. I should say that this property, with the improvements thereon, would rent for $50 per month. That amount is reasonable rent for it since the award.

26 Cross-examination:

Ques. 3. What is the population of the town in which this lot is situated?

Ans. I could only guess at it. I should say about 6,000.

Ques. 4. Give your estimate of the number of commercial business houses in the town.

Ans. I cannot answer that without getting up a list of the houses. If I should guess at the number I might miss it considerably.

Ques. 5. Are there as many as one hundred such houses in the town?

Ans. I should say that there is over one hundred business houses in the town—considerably over that number.

Ques. 6. Give the breadth and depth of this lot, if you can.

Ans. It is about 24 feet in width by 90 feet in depth.

Ques. 7. Give, if you can, the dimensions of the building upon it.

Ans. I cannot do it. I think that the building covers the front of the lot and probably runs back forty or fifty feet. It is a two-story building.

Ques. 8. Are you the son and agents of the plaintiffs?

Ans. I am.

Ques. 9. Do you hold the title to their property in trust for them?

Ans. Yes.

Ques. 10. How long have you been their agent?

Ans. About ten years.

Ques. 11. Did you, as their agent or otherwise, ever demand of the defendant D. C. Rugg any rent for this lot?

Ans. I did not.

Ques. 12. Did you, as their agent or otherwise, ever demand of the defendant Rugg the possession of this lot or a conveyance to you or to them of the title to it?

Ans. No.

27 Redirect examination:

Ques. 13. Do you hold the title to this lot?

Ans. No.

A. B. GAINES.

J. P. MELLARD, being introduced upon the part of the plaintiffs and sworn, deposes and says:

Ques. 1. State your name, age, residence, and business.

Ans. My name is J. P. Mellard; age, forty-nine years; residence, Hot Springs; real-estate agent; have been in the business in Hot Springs about seven years.

Ques. 2. Did you ever rent lot 10, in block 77?

(Objected to by defendants' counsel—not within the order.)

Ans. Yes.

Ques. —. Can you state from your knowledge of the rental value of the property in the vicinity of this lot what would be a reasonable rental value of this lot with the improvements thereon—has been since the award of the Hot Springs Commission?

(Objected to by defendants' counsel as not coming within the scope of the master's examination.)

Ans. I can only state what I rented the property for. I do not know the rental value of the property in the vicinity.

Ques. 4. Did you rent this property as the agent of the defendant D. C. Rugg; and if so, during what time and what did you get for it?

(Objected to because the same is not within the scope of the master's examination.)

Ans. Yes; for several months; but I do not recollect the time; but it was some two or three years ago. I think $52.50 per month.

Ques. 5. Was that a reasonable rental for that property at that time?

(Objected to for same reason as above.)

28 Ans. While I think that all the rents along the street where this property is is to- high, yet at the same time what I received was the market value of the rents.

Ques. 6. Has the market value changed materially, either before the time you rented it or since? And, if so, state how and when since the award of the commission.

(Objected to for same reason as above given.)

Ans. I do not know.

Ques. 7. State, if you please, what would have been the market value of said tract of land within said period of time as to the ground rent per foot front of said property.

Ans. I do not know. I never had any ground-rent business.

Cross-examination:

Ques. 8. Has there been any vacant ground in that vicinity, fronting on the same street, since the awards were made?

Ans. Not that I know of.

Ques. 9. Have you passed by that lot almost daily since the awards were made?

Ans. Yes.

Ques. 10. What size house is there on it?

Ans. A two-story frame. It is some twenty to twenty-four feet wide and from 40 to 60 feet deep. This is by estimate, as I never measured it.

Ques. 11. To whom did you rent it?

Ans. George Hoffman.

Ques. 12. Did you give him a written lease?

Ans. That is my recollection.

Ques. 13. Did you rent him the house or the lot?

Ans. I think both.

Ques. 14. What would have been a reasonable rent for the
29 land then if there had been no house upon it?

Ans. I do not know. I never had any such case.

Ques. 15. Was ground rent here higher in 1874 and 1875 than it has been since the awards were made by the commissioners?

Ans. I do not know.

J. P. MELLARD.

O. F. SMITH, being introduced upon the part of the plaintiff and duly sworn, deposes and says:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is O. F. Smith; age, forty-nine years; residence, Hot Springs; occupation, real-estate and loan agent.

Ques. 2. How long have you been in the real-estate business in Hot Springs?

Ans. I went into it four years ago last June.

Ques. 3. Are you familiar with the rental values of property on Center avenue, in the city of Hot Springs, during that time, in the vicinity of block 77?

Ans. I took charge of some buildings in block 77 after I went into business—I think about three years ago.

Ques. 4. Have you a general knowledge of what a lot situated about as lot 10, in block 77, with a house upon it of about twenty-one feet by about forty or fifty feet, two stories high, would rent at during said time—that is to say, the market value; and, if so, what would it be?

(Objected to by defendants' counsel for the reason that it is not within the scope of the master's examination.)

Ans. My judgment is that such a building would rent at from $500 to $700 per year. I place it — $500, to be safe, for it would be vacant some. It might rent for more.

30 Ques. 5. Can you state what would be a reasonable rental value per foot front for the ground of a lot about 24 feet in width by 90 feet in depth, during said time, in that locality, as a ground rent, without any improvements upon it?

Ans. I should say about from $13.00 to $14.00 per front foot.

Cross-examination:

Ques. 6. Did you at first, in answer to the last question, answer $275 or $300 per annum?

Ans. I think that I did say that.

Ques. 7. On what do you base your opinion that it is worth from $13 to $14 per front foot per annum rent?

Ans. On the value of the ground and the way that property rents along there.

Ques. 8. Have you known of any vacant or unimproved land being rented in that vicinity?

Ans. I have not.

Ques. 9. Are you aware that this lot, at a distance of about 50 feet from the front, enters a hill or a high cliff, rendering its use there impracticable without costly excavation?

Ans. I did not take the back part of *those* lot into consideration as a basis in estimating the rental value—only the front and the building. If they were excavated, they would be worth more.

Ques. 10. But were you aware of that fact?

Ans. Yes, sir; I know that nearly all those lots ran into the *bank*, but do not know the distance that each one does, or from the buildings to the dirt or stone wall.

Ques. 11. Do you mean to be understood as giving it as your opinion that a lease of this lot made in June, 1882, when you commenced business here, and running from *there* to the present date, would, if the ground had been vacant or unimproved, have produced a rental equivalent to $13 or $14 per front foot?

31 Ans. I believe that at the time you mention a lease made upon a fair basis and having four years, or up to this time, to run could have been made for $13 or $14 per front foot.

Ques. 12. Upon what do you base that belief? Give all your reasons.

Ans. I base it on the value that the cheap buildings in that block bring, the low cost of lumber, and the rents that they bring.

Ques. 13. Are you aware that only brick or other non-combustible material could, in 1882 and since, be used to construct buildings on this lot and in its vicinity by ordinance?

Ans. That did not occur to me; in fact, I don't know whether the ordinance was in effect at that time or not. They allowed them to put up cheap buildings, covered with sheet iron, for some two

years after that time. That is my recollection. I answered with the idea that cheap buildings could be constructed on vacant lots.

Ques. 14. If the fact was as stated in the question, how does it affect your estimate?

Ans. If the ground was all vacant and they couldn't build cheap buildings it would affect it considerably in making an estimate for leasing it, but I do not know to what extent.

Redirect examination:

Ques. 15. If a party rented the ground and put up a fire-proof building, would not such a building rent for much more than the same size building not so constructed?

Ans. Yes.

Ques. 16. Would a building so constructed of fire-proof materials cost less to insure and be less liable to loss from fire, as well as its contents, and be intrinsically of greater value on account of the length of its duration?

Ans. Yes; there would be a difference of from 4½ to 5% in insurance on account of construction. There may be insurance
32 in that block, but I have none. I have paid 7% for insurance in that block on wooden buildings.

Ques. 17. Considering the greater value of a fire-proof building, the increased rent that it would bring, the risk of loss, with a fair lease for four years, with a stipulation providing for the payment of the improvements at the end of it, or other disposition which could be made justly between the parties, would there be any material difference in the value of the ground rent on account of the fire ordinance; and, if so, which way would it preponderate?

Ans. I do not see that it would make any difference in the ground rent.

Ques. 18. Do you know what the provisions of the fire ordinance of the city of Hot Springs are, which have been in existence since 1882, and exactly what kind of a building can be erected legally without a violation of law under it?

Ans. I have never read the fire ordinance of the city of Hot Springs. I understand it prohibits the erection of frame buildings on Central avenue from Gwynn hill to Whittington avenue.

Ques. 19. Is it not a fact that since 1882 buildings have been frequently erected within said limits which were not constructed of non-combustible materials and whose erection were not interfered with by said ordinance or the city authorities?

Ans. I do not know of any violations of the ordinance. I have learned that parties have been stopped from building cheap buildings. There have been frame buildings erected and covered with sheet iron, but that was finally stopped.

Ques. 20. Have any of the buildings erected in the city been entirely constructed of non-combustible or fire-proof materials?

Ans. No.

Ques. 21. I wish you would state what the lot in controversy would be worth per front foot with a good title and without any improvements.

33 (Objected to by defendants' counsel for the reason that it does not come within the scope of the master's examination.)

Ans. From $225 to $250 per front foot.

O. F. SMITH.

FEBRUARY 24TH, 1887.

JOHN D. WARE, being introduced and duly sworn, deposes and says:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is John D. Ware; age, thirty-five years; residence Hot Springs; occupation, real-estate and insurance agent.

Ques. 2. Are you familiar with the rental values of property on Central avenue since the award of the Hot Springs Commission?

Ans. I am to some extent. I have had some rents to collect and it has otherwise come under my observation.

Ques. 3. Have you a general knowledge of what a lot situated as lot 10, in block 77, 24 ft. by 90 ft., with a house upon it about 24 ft. by 40 ft. or 50 ft., two stories high, would rent at during said time—that is to say, the market value; and, if so, what would it be?

(Objected to by defendants' counsel for the reason that it is not within the scope of the master's examination.)

Ans. The rental value of lot 10, block 77, is now worth $600 per year. This does not refer to the time prior to the improvement of the house. The improvement in the house took place some six or seven months ago.

Ques. 4. Do you know what it rented at before that time?

Ans. I think that the rental value before that time was $400.

Ques. 5. Can you state what would be a reasonable rental value per foot front for the ground of a lot 24 ft. in width by 90 ft. in depth during that time, in that locality, as a ground rent, without any improvements upon it?

Ans. I think it would be worth ten per cent. upon whatever
34 the land and improvements would bring. By taking off the improvements and calculating the ten per cent. upon the value of the land would be its rental value. I estimate that ground to be worth at present $200 per front foot. It has not been worth so much all of the time since the award of the commission.

Ques. 6. Have you sold any property or had any offer to buy property in that immediate neighborhood; and, if so, at what price?

(Objected — by defendants' counsel for same reason as last above.)

Ans. We sold lot 6, in block 77, with a frontage of 23 ft. front and 90 ft. deep, for $6,000. We have had offers for lot 21, in said block—$200 in cash per front foot, and we made that offer to the owner, and he refused it.

Cross-examination:

Ques. 7. Is it really your opinion that naked land here, let for a term of four years, would bring annually 10% of its value?

Ans. In that locality I think it would.

Ques. 8. On what do you base that opinion? Give all your reasons in detail.

Ans. The Commercial block is nearly opposite that lot. They have leased for three years. The Hot Springs Hardware Company pay $1,200 per year. Their store is about 20 ft. by 75 or 80 ft. Dr. Garnett owns a place below, in that immediate locality, in block 77, with 17 ft. front by about 40 ft. deep. It brings $600 per year with improvements. Powell Clayton owns a lot in block 129, in that locality and nearly opposite. His lot is 20 ft. x 100 ft. The improvements are worth about $1,500. That rents at $60 per month. Lot 6, in block 77, rents for $780 per year. The improvements are worth about $1,500. The lot is 23 ft. front. The house is about 50 ft. long.

Ques. 9. Are these your only reasons for your statement that naked land in that locality is worth annually a rental of 10% of its value?

A. I value *of* the ground at $200 per front foot. Inasmuch as the property is bringing, with the improvements, more than 10% upon that value, I think it is sufficient reason to place it at 10%.

35

Ques. 10. Do you seriously think you could rent naked land in that locality for a term of four years for 10% annually of its value?

Ans. That would depend upon the nature of the lease. If an equitable arrangement was made in regard to the improvements, I answer yes.

Ques. 11. What do you mean by an equitable arrangement?

Ans. I mean that the owner should pay for the improvements at the end of the lease what their value would be at that time.

Ques. 12. Have you known of any naked land being rented in that locality since the year 1879?

Ans. No; I have not.

Ques. 13. You speak of the Hot Springs Hardware Company having a store rented. Is that in a brick building?

Ans. It is.

Ques. 14. Has that company also a cellar under the store?

Ans. They have a basement which they use for storing goods.

Ques. 15. And have they also above their store-room *and the* room of the same dimensions?

Ans. Yes.

Ques. 16. Is it for all these that they pay the $1,200, or $100 per month, of which you spoke?

Ans. It is.

Ques. 17. Is there a two-story brick building on the lot you spoke of as Dr. Garnett's?

Ans. Yes, sir.

Redirect examination:

Ques. 18. What would a brick house 24 ft. x 40 or 50 ft. and two stories high, on the property in controversy, rent at per month?

36 (Objected to by defendants' counsel for same reason as last above.)

Ans. In that locality it ought to bring $60.

Ques. 19. Would $75 be a reasonable rent?

(Objected to by defendants' counsel for same reason as last above.)

Ans. Yes; I think it would not be an outrageous price.

Ques. 20. What could a brick building of the size indicated be built for?

Ans. I do not know that I am competent to answer that question. I understand that the Guynn building cost $2,500, and the Gaines and Garnett building cost $3,000; that would make Garnett's part about $1,500.

Ques. 21. Is this the lot you spoke of as renting at $50 per month?

Ans. It is.

Recross-examination:

(The plaintiffs object to the recross-examination, as they had not brought out any new matter.)

Ques. 22. State how much brick, how much sand, and how much lime it would take to construct such a building as you are asked about, and what would be the cost in the building of each.

Ans. I do not know.

JOHN D. WARE.

C. N. RIX, being introduced upon the part of the plaintiffs and duly sworn, says:

Ques. 1. State your name, age, residence, occupation.

Ans. My name is C. N. Rix; age, forty-four years; Hot Springs; banker.

Ques. 2. Have you ever had any experience in renting real estate in Hot Springs, or do you know anything about the rental values of property in said town?

Ans. A very limited experience in renting property. I have a fair knowledge of the value of such property by judging from
37 the way property rents within my knowledge. I have some property rented and I judge somewhat from that.

Ques. 3. What would be a reasonable ground rent per foot front for a lot 24 ft. front by 90 ft. on Central avenue, in block 77, 86, and 87, per annum since the award of the Hot Springs Commission, on a fair lease, providing for payment for improvements at the expiration?

(Objected to by defendants' counsel except as to block 77.)

Ans. The lot on the corner of Central avenue and Court street I have rented or leased. My contract is for a term of ten years; to divide the rents derived from the building half and half; pay one-fourth of the taxes, one half of all the expenses and repairs,

including insurance, and at the end of ten years one-half of the original cost of the building, or in default of that to have an extension of five years upon the same terms and a lien upon the real estate for the amount due at the end of ten years—the cost of one-half of the building. My recollection is that the original agreement was that the building was not to cost over $10,000, but before completing we found that we could not complete for that amount; got the amount extended, and the building cost about $13,000. This contract was made, I think, in 1882.

Ques. 4. What would be a reasonable rental for that property per month?

(Objected to by defendants' counsel.)

Ans. $250. I estimate it at that on an average. At first it rented for $3,600.

Ques. 5. Do you consider that a fair average for the time since the building was erected?

Ans. Yes.

Ques. 6. Please continue your answer to question No. 3, with reference to lot 10, block 77.

Ans. I do not know that I am competent to make an estimate upon property in that block. I have never heard of any price being established there as a rental value upon the property for the ground rent.

CHAS. N. RIX.

38 S. P. VAN PATTEN, being introduced upon the part of the plaintiffs and first duly sworn, deposes and says:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is S. P. Van Patten; of lawful age; residence, Hot Springs, Arkansas; occupation, architect and builder.

Ques. 2. How long have you been engaged in the business?

Ans. Eleven years; the last three and a half of that time in Hot Springs.

Ques. 3. Have you made an estimate of the value of the improvements upon lot 10, in block 77, in the city of Hot Springs? And, if so, state what it is and what said improvements would be worth to move off of the lot.

Ans. I have; I estimate the value when made at $800; that they are worth now $700, and to move them off they would be worth $200. I made this estimate in connection with Mr. J. P. Ledwidge, and we fully agree in our estimates.

S. P. VAN PATTEN.

P. J. LEDWIDGE, being introduced on the part of the plaintiffs and first duly sworn, deposes and says:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is P. J. Ledwidge; age, forty-four years; residence, Hot Springs for the last eleven years.

Ques. 2. Have you made an estimate on the value of the improvements upon lot 10, in block 77, in the city of Hot Springs? And, if so, state what it is and what said improvements would be worth to move them off of the lot.

Ans. I have, and estimate the value of said improvements when put there to have been $800; now $700; that to move them off they would be worth $100. Mr. S. P. Van Patten and myself made the examination together, and we agree fully in our estimate.

J. P. LEDWIDGE.

39 (Endorsed:) Filed April 9th, 1887. Ralph L. Goodrich, clerk.

And on May 10th, 1887, as follows:

No. 647. Comes the defendant D. C. Rugg, by G. W. Murphy, Esq., his solicitor, and files herein his exceptions to report of master; which exceptions are as follows:

In the U. S. Circuit Court, Eastern District of Arkansas.

WILLIAM H. GAINES and MARIA GAINES, His Wife, Pl'ffs.
*vs.*
H. A. BOOTH, D. C. RUGG, *et al.*, Def'ts. } 647.

The defendant D. C. Rugg excepts to the report and findings of the special master in this case because--

First. The findings by said master of the rental value of lot ten, in block seventy-seven, to be, with improvements, $400 per annum, and without improvements, $12.50 per front foot per annum, are in excess of the rent reserved and fixed by the lease referred to and relied on in the bill of complaint and read in evidence by the plaintiffs, and are also against the evidence, which shows said rental value to be not exceeding $6.50 per front foot per annum.

Second. The finding of $355.75 as interest in plaintiffs' favor is unwarranted by said master's commission and is contrary to the evidence, which shows that no demand was ever made of defendant by plaintiffs or their agent, either for a conveyance of the title to said lot or for the payment of rent for it; and the defendant submits that inasmuch as the testimony taken before said master shows
40 that no demand was made by plaintiffs of any of the defendants for rent for said lot, and that defendant since the date of the award by the Hot Springs commissioners of the right to purchase said lot has been permitted by plaintiffs to occupy said lot and pay taxes on it as his own, none of the items or sums found by said master in their favor should be allowed.

G. W. MURPHY,
*Sol. for Def't.*

(Endorsed:) Filed May 10th, 1887. Ralph L. Goodrich, clerk.

On the final hearing the following depositions, &c., were read:

The deposition of S. W. Fordyce, taken on the 8th day of September, 1885, between the hours of 8 o'clock a. m. and 6 o'clock p. m., at room No. 10, at the Arlington hotel, in the city of Hot Springs, Arkansas, by consent of all parties to be read in evidence in an action between William H. and Maria Gaines, plaintiffs, and D. C. Rugg *et al.*, defendants, pending in the chancery court of the United States for the eastern district of Arkansas.

S. W. FORDYCE, being duly sworn, deposes as follows:

My name is S. W. Fordyce; I reside in Hot Springs, Arkansas; my age is forty-five years.

Q. Did you have any conversation with William H. Gaines at any time after the law passed in regard to the settlement of the Hot Springs titles upon the Hot Springs reservation—that is, the act that passed opposing the commissioners?

A. Yes; I had several conversations. My first conversation was about thirty days after the passage of the act or approval of the act referred to. Major Nelson offered to sell me a half interest in a piece of property adjoining the Episcopal-church property. I then went to Major Gaines to ask if he intended making any contest for that piece of property. His reply was that he did not; that
41 Nelson had buildozed him into signing a quitclaim deed to it by threatening him with defeating the passage of the bill if he did not sign the deed for it. Some six or eight months after this conversation we had another talk in regard to the property claimed by him and certain tenants who had heretofore held under him, in which he claimed that if the commissioners would construe the law properly that he would get all that he put in a claim for before them. Some time in the summer of 1879 I had a talk with him in reference to what was known as the Chidester property. As I and my associates desired to buy, my recollection is that Major Gaines told me that he had agreed with Chidester at one time to quitclaim that property to him for a certain consideration, but that Chidester had never complied with the agreement; that he was willing to comply with his part of it at any time. In our conversation at that time in regard to this property he again reiterated that he was entitled to all the property claimed by those who held under him by lease and contract; that he had bargained away certain pieces for which he would make no claim. One of these, I recollect, was a piece of property occupied by one George L. Wilson as a livery stable. I think there was one or two other pieces, but I do not now recollect by whom they were occupied. This is about all that I have got to say.

Q. Are you acquainted with D. C. Rugg? And, if so, state the nature of your acquaintance with him.

A. Yes, sir; I have known D. C. Rugg since 1864; lived in the same town in Alabama, and he was my partner in business in Hot Springs for six or seven years.

Q. Do you know whether or not he was familiar with the fact during the year 1879 that there was a question pending before the Hot Springs Commission between William H. Gaines and Maria Gaines,

H. M. Rector and the heirs of John C. Hale, known as the old claimants or landlords, and numerous other parties, their tenants?

Objected to by attorney for D. C. Rugg.

A. My answer to that is this: I can't state from my own
42 knowledge as to his familiarity in regard to those cases, but from the fact that it was a matter generally known by all the residents of Hot Springs I think that he must have known, at least in a general way, that the contest was going on.

Q. Have you conversed with him in regard to this matter at any time prior to the bringing of these suits?

Objected to by attorney for D. C. Rugg.

A. I think that I have, but I do not recollect any particular time that I done so. Everybody was discussing them and he and I must have discussed them.

Q. How was D. C. Rugg with reference to being posted upon matters of public or general interest which concerned himself individually between June, 1884, and June, 1879?

Objected to by attorney for D. C. Rugg.

A. I have always regarded Col. Rugg as a man well posted generally since my acquaintance with him, and know of no reason why he was not as well posted in matters of public interest from 1884 to 1879 as at any other time during our acquaintance.

Cross-examination:

Q. Is it not a fact that you have no recollection at all of having any conversation with Rugg about these matters, and that you merely conclude that you must have talked with him or heard him talk about them from the fact of your having had or heard many conversations about them?

A. No; that is not a fact.

Q. Do you know that you do recollect of having conversations with Rugg about the Gaines, Hale, and Rector claims?

A. I recollect distinctly prior to the final settlement of these claims by the commission, which was only a few months before the commission closed its work. In that conversation I stated to
43 him that myself and others had purchased a half interest in the Chidester claim.

Q. Please state all that he said to you and you to him in this conversation.

A. My recollection is that I told him that it was a good purchase, and he agreed with me that it was, and I think I suggested that some money could be made in buying from the tenants who owned their own buildings, and that we both agreed that it was a safe investment, as we believed the bill originally intended to allow the owners and occupants of the buildings to have the right to purchase the ground. That is all that I can recollect.

Q. Was any one present?

A. No, sir.

Q. If you recollect any subsequent conversation with him between then and the bringing of these suits, please name them and state what was said.

A. Yes; I recollect another conversation, which was about the time that Col. D. C. Rugg purchased the corner building from Brantley, which was that he had purchased that building at what he thought was a good bargain, and that I could have a half interest with him if I desired it. I told him that I did not then have the money, but that I would be glad to take it when I did. That was the substance of that conversation.

Q. If you recollect any conversations about these matters with him subsequent to that and prior to the bringing of these suits, state them and what was said.

A. I don't.

Q. Were these conversations that you spoke of having with William H. Gaines before the Hot Springs commissioners had rendered their decisions?

A. Yes.

SAM. W. FORDYCE.

Fee, $2, paid by Wm. H. Gaines.

44 STATE OF ARKANSAS, }
*County of Garland.* }

I, W. A. Kirk, a notary public within and for the county of Garland and State of Arkansas, do certify that the foregoing deposition of S. W. Fordyce was taken before me and was read to him and subscribed by him in my presence at the time and place and in the action mentioned in the caption, the said S. W. Fordyce having been sworn by me that the evidence he should give in the action should be the truth, the whole truth, and nothing but the truth, and that his statements were reduced to writing by me in his presence, the plaintiff William H. Gaines and his attorney, R. G. Davies, and the defendants' attorneys, John M. Harrell and Geo. W. Murphy, being present at the examination.

Given under my hand as such notary public this the 8th day of September, 1885.

[SEAL.] W. A. KIRK,
*Notary Public.*

(Endorsed:) Opened and published by order of court January 6th, 1886. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

(Here follow three maps marked pp. 45, 46, & 47.)

48 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., —— —, 188–.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of petition No. 784, before the Hot Springs Commission, testimony submitted in support of same, and the finding of the commission are true and literal exemplifications from the originals on file or on record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

United States General Land Office Seal.

N. C. McFARLAND.
*Commissioner of General Land Office.*

[Endorsed:] No. 784. Hot Springs Commission. Petition of William H. and Maria Gaines. Filed Octo. 26th, '77. J. W. Anderson, cl'k H. S. com'rs.

49 UNITED STATES OF AMERICA:

Hot Springs Commission.

In the Matter of the Claim of WILLIAM H. GAINES and MARIA GAINES.

To the Hot Springs commissioners:

Your petitioners, William H. Gaines and Maria Gaines, now both in their own right, and for over twenty-five years residing at Hot Springs, in the State of Arkansas, upon the premises herein claimed, represent that they claim the following-described tract of land, a map of which is filed herewith and made a part hereof, marked Exhibit "A," situated in the Hot Springs reservation, which tract is bounded as follows, to wit: On the north by the Hot Springs Mountain reservation, with a line bearing as follows: S. 82° E. 260 feet, S. 12° 11′ E. 270 feet, N. 77° 43′ E. 680 feet, and N. 65° 03′ E. 586.3 feet, N. 88° 11′ E. 220 feet, N. 60° 19′ E. 500.1 *feet*, N. 44° 01′ E. 590 feet to ¼-sec. line between S. E. ¼ and S. W. ¼ of sec. 33, T. 2 S., R. 19 west; thence on the east by said line 1,325 feet south; thence on the south by the township line between T. 2 S. and T. 3 S.,
50 being south line of S. W. ¼ of sec. 33, T. 2 S., R. 19 W., running west 2,640 feet; thence to sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in R. 19 W.; thence on the west by the sec. line between secs. 32 and 33, T. 2 S., R. 19 W., 1,320 feet, running north to place of beginning, lying and being in the S. W. ¼ of sec. 33, T. 2 S., R. 19 west, except the following-described lands, a map of which is filed herewith and made part hereof, marked Exhibit "B," which lands your petitioners have sold and given to the following parties, to wit: Given to the Methodist Episcopal church the following lands: Commencing at a point 60 ft. N. of sec. cor. post for sect's 32 and 33, T. 2 S., and sect's 4 and 5, T. 3

S., all in R. 19 W., thence bearing S. 83° east one hundred and forty feet; thence N. 7° E. fifty (50) feet; thence N. 83° W. 150 feet; thence south 51 feet to place of beginning, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to Frank Horton the following lands: Commencing at a point N. 33° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and sec's 4 and 5, T. 3 S., all in range 19 west and distant therefrom 365 ft., thence bearing south 84° E. 120 ft.; thence S. 6° E. 24 ft.; thence N. 84° E. 120 ft.; thence N. 6° E. 24 ft. to point of commencement, lying and being in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian.

51 Sold to Joseph Molen the following lands: Commencing at a point N. 35° 30′ W. of centr- subdivision stake on line bet. S. W. ¼ sec. 33, T. 2 S., and N. W. ¼ sec. 4, T. 3 S., R. 19 W., and distant therefrom 630 ft., thence bearing N. 29° 30′ W. 200 ft.; thence S. 60° W. 100 ft.; thence S. 29° 30′ E. 200 ft.; thence N. 60° E. 100 ft. to point of commencement, lying and being situate in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian. Sold to Thomas Secoy the following lands: Commencing at a point N. 87° 30′ W. of centre subdivision stake on line between S. W. ¼ of sec. 33, T. 2 S., and N. W. ¼ of sec. 4, T. 3 S., all in range 19 W. and distant therefrom 640 ft., thence bearing S. 37° 20′ E. 110 ft.; thence N. 81° 50′ E. 51 ft.; thence N. 37° 20′ W. 120 ft.; thence S. 60° W. 50 ft. to place of beginning, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to James Ritchie the following lands: Commencing at a point N. 35° E. of centre subdivision stake on line bet. S. W. ¼ of sec. 33, T. 2 S., and N. W. ¼ of sec. 4, T. 3 S., all in range 19 W. and distant therefrom 720 ft., thence bearing N. 60° E. 100 ft.; thence S. 29° E. 250 ft.; thence S. 43° W. 105 ft.; thence N. 29° W. 285 ft. to point of commencement, lying and being in S. E. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian.

52 Sold to C. S. Williamson the following lands: On the north by the old Benton road, with a line bearing N. 60° E. 150 ft; thence on the east by the claim of Julia S. Carhart and D. Carey, with a line bearing S. 29° 30′ E. 430 ft.; thence on the south by Gaines avenue, with a line bearing S. 60° W. 150 ft.; thence on the west by the claim of Wm. H. Gaines, with a line bearing N. 29° 30′ W. 430 ft. to place of beginning, lying and being in the S. E. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to I. W. Carhart the following lands: Commencing at a point N. 60° E. of centre subdivision stake on line between S. W. ¼ of sec. 33, T. 2 S., and N.W. ¼ of sec. 4, T. 3 S., R. 19 W., and distant therefrom 735 ft., thence bearing N. 29° 30′ W. 230 ft., thence N. 60° E. 190 ft., thence S. 69° 51′ E. 480 ft., thence S. 29° 30′ E. 95 ft., thence S. 61° W. 400 ft., thence N. 29° 30′ W. 200 ft., thence S. 60° W. 100 ft. to point of commencement, lying and being in the S. E. ¼ of the S. W. ¼ of sec. 33, T. 2 S.,

R. 19 W., all the above bearings being read from the magnetic meridian. Given to Sarah Flowers the following lands: Commencing at a point N. 23° 10′ east of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 W., and distant therefrom 505 ft., thence bearing N. 82° 15′ E. 72 ft., thence S. 7° 45′ E. 22½ ft., thence S. 82° 15′ W. 72 ft., thence N. 7° 45′ W. 22½ ft. to point of commencement, lying and being in the
53 S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian. Given to Fannie Williamson the following lands: Commencing at a point N. 83° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 west and distant therefrom 740 ft., thence bearing N. 40° W. 300 ft., thence S. 55° W. 40 ft., thence N. 40° W. 40 ft., thence S. 55° W. 70 ft., thence S. 23° E. 280 ft., thence N. 75° E. 200 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being taken from the magnetic meridian. Given to Mary F. Gaines the following lands: Commencing at a point N. 21° 5′ E. of sec. cor. post for sec's 32 and 33, T. 2 S., and sec's 4 and 5, T. 3 S., all in range 19 west and distant therefrom 537 ft., thence bearing N. 79° E. 72 ft., thence S. 11° E. 41½ ft., thence S. 79° W. 72 ft., thence N. 11° W. 41½ ft to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to Wm. H. Nelson the following lands: Commencing at a point N. 28° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 west and distant therefrom 680 feet, thence bearing N. 58° E. 200 ft., thence N. 35° W. 135 ft., thence S. 75° W. 120 ft., thence 86° W. 170 ft, thence S. 75° E. 45 ft. to point of commencement, lying and being in the S. W. ¼ of the
S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above
54 bearings being read from the magnetic meridian. Given to the Protestant Episcopal church the following lands: On the north by the claim of Wm. H. Gaines, with a line running N. 80° E. 65 ft.; on the east by the Gaines claim, with a line running S. 18° E. 70 ft.; on the south by the claim of S. W. Fordyce, with a line running N. 18° W. 108 ft.; thence N. 80 E. 50 ft.; thence S. 18° E. 20 ft. to the place of commencement, all the above bearings being read from the magnetic meridian.

Given to Kate McGrath the following lands: Commencing at a point N. 9° 30′ E. of sec. cor. post for secs. 32 and 33, T. 2. S., and secs. 4 and 5, T. 3 S., all in range 19 W. and distant therefrom 647 feet, thence bearing south 79° 30′ W. 102 ft., thence S. 10° 30′ E. 50 ft., thence N. 79° 30′ E. 102 ft., thence N. 10° 30′ W. 50 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to George W. Baxter the following lands: Commencing at a point S. 12° 40′ E. of ¼-sec. post fret. sec'ts 32 and 33, T. 2 S., R. 19 W., and distant therefrom 1,492 ft., thence bearing south 85° 45′ W. 65 ft., thence S. 40° 15′ E. 12½ ft., thence N. 85° 45′ E. 65 ft., thence N. 40° 15′ W. 12½ ft. to point of com-

mencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the
55 magnetic meridian. Sold to B. W. Goode the following lands: Commencing at a point 13° 5′ E. of ¼-sec. post bet. secs. 32 and 33, T. 2 S., R. 19 W., and distant therefrom 1,420 ft., thence bearing S. 85° W. 100 ft., thence S. 50° E. 20 ft., thence N. 85° E. 100 ft., thence N. 50° W. 20 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to G. L. Wilson the following lands: Commencing at a point S. 12° 20′ E. of ¼-sec. post between secs. 32 and 33, T. 2 S., R. 19 W., and distant therefrom 1,380 ft., thence bearing S. 89° 50′ W. 100 ft., thence S. 0° 10′ E. 35 ft., thence N. 89° 50′ E. 100 ft., thence N. 0° 10′ W. 35 feet to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Given to Albert Gaines the following lands: On the N. by the Hot Springs hotel property, the claim of W. H. Gaines, with a line bearing north 76° 30′ E. 50 ft.; thence on the east by Hot Springs creek, with a line bearing south 13° 30′ E. 63 ft.; thence on the south by the claim of Gordon, with a line bearing S. 75° W. 50 ft.; thence on the west by Valley St., with a line bearing N. 13° 30′ W. 62 ft. to point of beginning, including the office of A. K. Taylor, the entrance to Gaines' cottage, and the building occupied by Mr. Lemen, lying and being in the S. W. ¼ of the N. W. ¼ of sec. 33,
56 T. 2 S., R. 19 W.; also the following-described land: On the north by the claim of J. J. Sutton, with a line bearing N. 79° 30′ E. 185 ft.; thence on the east by Valley St., with a line bearing S. 10½° 20 ft.; thence on the south by the claims of Ellen McMurray, with a line bearing S. 79° 30′ W. 185 ft.; thence on the west by the section line bet. sect's 32 and 33, T. 2 S., R. 19 W., and the claim of J. J. Sumpter, with a line bearing N. 10° 30′ W. 20 ft. to place of beginning, lying and being in the S. W. ¼ of S. W. ¼ of sect'n 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Gave to Augustus L. Stitt the following lands: On the N. by the claim embracing the Garland house, with a line bearing N. 60° 45′ E. 80 ft.; thence *thence* on the east by the claim of the Peoria house and cemet-ry, with a line bearing S. 10° E. 140 ft.; thence on the S. by Malvern road, with a line bearing S. 60 W. 30 ft.; thence on the W. by the Malvern road, with a line bearing N. 32 W. 140 ft. to place of beginning; also the following: On the N. by the old Benton road, with a line bearing N. 60° E. 300 ft.; thence on the east by the claim of Jos. Molen, with a line bearing S. 26° E. 160 ft; thence on the south by the cemet-ry, with a line bearing S. 69° W. 180 ft. and N. 81° W. 110 ft. and S. 77½° W. 32 ft.; thence on the west by an alley fronting the Peoria house, with a line bearing N. 14° W. 50 ft. to place of beginning, lying and being in
57 the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being taken from the magnetic meridian. Sold to James Mingovan the following lands: Commencing at a point S. 17° W. of centre subdivision stake on line bet. S. E. ¼ and

S. W. ¼ of sec. 33, T. 2 S., R. 19 W., and distant therefrom 500 ft., thence bearing north 24° W. 475 ft.; thence S. 770 ft., W. 300 ft.; thence S. 35° E. 420 ft.; thence S. 88° 45 E. 250 ft. to point of commencement, lying and being in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian; all of which lands thus sold or given away they set up no claim to; that the following improvements are situate upon the premises claimed by your petitioners, namely, four hotels, fifty-three stores, saloons, and restaurants and two livery stables, one planing mill, one woolen factory and four dwelling-houses, and various stables, cribs, wells, fencing and other improvements usual about hotels, storehouses, livery stables, and dwelling-houses; that the same were erected by your petitioners and their agents and tenants under contracts made with your petitioners previous to April 24th, 1876; that they are of the value of one hundred and fifty thousand dollars.

Your petitioners further say that they claim to be the owners
58 of the said premises and entitled to again purchase the same from the United States upon the following grounds, to wit: That in 1839 Lydia Belding made application as the widow of Ludixocus Belding to the proper United States land office to purchase the whole of the southwest quarter of section (33) thirty-three, in township two (2) south and range (19) nineteen west of the fifth principal meridian, a copy of which application is hereto attached and made part hereof, marked Exhibit "C;" that said Lydia Belding some time after she had made said application transferred her right to her children, Maria Gaines, wife of Wm. H. Gaines, and Albert Belding, George Belding, and Henry Belding, a copy of which relinquishment and transfer is hereto attached and marked Exhibit "D," and after a full examination of said application to enter and purchase said quarter section of land, the Secretary of the Interior, on the 21st day of November, 1851, instructed the commissioner of public lands to permit the heirs and legal representatives of Ludovicus Belding to enter and purchase said lands; that in pursuance of said order from the then Secretary of the Interior the commissioner of public lands instructed the register and receiver of the United States land office at Washington, in the State of Arkansas, to permit the heirs and
legal representatives of said Ludovicus Belding to enter and
59 purchase said quarter section of land, and, in pursuance of said instruction, Maria Belding, wife of Wm. H. Gaines, Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, on the 19th day of December, 1851, made application in the name of said heirs and legal representatives of said Ludovicus Belding to the said register and receiver at said land office at Washington, Arkansas, which land office was the proper land office for entering said land, a copy of which application is hereto attached and marked Exhibit "E," and prayed to be taken as a part hereof, and upon said application the said register and receiver permitted said Maria Gaines, wife of Wm. H. Gaines, Albert Belding, Henry Belding, and George Belding to enter and purchase the southwest quarter of section (33) thirty-

three, in township two (2) south, range (19) nineteen west, and said heirs and legal representatives did then and there enter and purchase said quarter section from the United States, and did then and there pay the United States the sum of two hundred dollars for said quarter section, that being the maximum price charged by the United States for her public lands. Said two hundred dollars were paid and advanced by Wm. H. Gaines, the husband of said Maria Gaines, late Maria Belding, and upon the payment of said
60 sum of money said heirs and legal representatives did, on the 19th day of December, 1851, receive from B. F. Hempstead, the duly authorized receiver of the United States land office at Washington, Arkansas, a patent certificate for said land, a copy of which is hereto attached, marked Exhibit "F," prayed to be taken as part hereof. The original is in the possession of your petitioners and subject to the order an- inspection of the honorable board of commissioners.

Your petitioners respectfully show and aver that by virtue of said entry and purchase and patent certificate therefor they were by the laws of the State of Arkansas and the laws of the United States legally entitled to have the possession and control of the whole of said quarter section of land thus entered and paid for, subject only to the rights of the United States Government; that notwithstanding the legal title still remained in the United States after said entry and purchase and the issuance of said patent certificate, still they by reason of said entry and purchase and the patent certificate issued therefor acquired an equitable estate in and to said quarter section, an estate that by the laws of the State of Arkansas and of the United States *were* hereditable, devisable, and assignable, so your petitioners aver that from the 19th day of December, 1851, to and including the 24th day of April, 1876, they not only had a legal right
61 in and to the possession of the premises herein claimed, but they had a legal right recognized by the laws of the State of Arkansas and by the United States to devise, sell, or lease the whole or any portion of said premises; that your petitioners' possession, more particularly hereafter set forth, was not the possession of a trespasser or a squatter on the public lands, but was a peaceable, lawful, and rightful possession under the laws both of the State of Arkansas and of the United States, and that the sales and leases are not the sales and leases of a trespasser or squarter upon the public lands, but were the sales and leases of parties legally in possession, and your petitioners are advised and aver the fact to be that all sales and all leases made by parties rightfully and legally in possession have always been recognized, countenanced, and held to be valid by both the courts of the State of Arkansas and of the United States as between the vendor and vendee and lessor and lessee and their privies.

Your petitioners show unto your honors that when they paid for and received said patent certificate they were not in possession of any portion of said quarter section of land, and that your petitioners recovered possession *to* a large and the most valuable portion of the premises now claimed by your petitioners through the courts

of the State and the Supreme Court of the United States
62 on account of the legal right to the possession and control of the lands and premises which your petitioners now claim.

Your petitioners respectfully show that at the time of said entry the northeast quarter of said quarter section was unoccupied, and the same is now included in the Hot Springs Mountain reservation, except about three acres in the southeast corner of said northeast quarter, which three acres, more or less, had been in the lawful possession of your petitioners for more than twenty years previous to April 24, 1876; the same was previous to that time fenced and improved by your petitioners. Your petitioners make no claim to any of said northeast quarter of the said southwest quarter, except said three acres, more or less, on the south of said new reservation. The northwest quarter of said southwest quarter, when entered as aforesaid, was, with the exception of some of the hot springs that are now included in the Hot Springs Mountain reservation, in the possession of John C. Hale and Henry M. Rector and other parties. Your petitioners recovered judgment against John C. Hale for the possession of so much of said northwest quarter of said southwest quarter as was occupied by him, and said judgment was affirmed by both the supreme court of the State of Arkansas and
63 of the United States, and also recovered judgment for possession against Henry M. Rector and others for the portion of said northwest quarter of said southwest quarter occupied by them; which judgments were affirmed by the supreme court of the State of Arkansas and of the United States, and, after said judgments were recovered and affirmed as aforesaid, said Hale and said Rector filed a bill in equity setting up an equitable title to said land and enjoining the execution of the judgment at law; which last suit was still pending in the United States Supreme Court on the 24th day of April, 1876, so that your petitioners never in fact had actual possession of said northwest quarter of said southwest quarter, and they do not now set up any claim to the same. The southeast quarter of said southwest quarter at the time of said entry was unoccupied, with the exception of about ten acres thereof in the southwest corner of said southeast quarter, which was cleared and fenced and in cultivation and occupied by Abigal Sabin, who soon afterwards married a Mr. Du Pas. Your petitioners, being willing to pay said Abigal Sabin as well as all others for the improvements that they had made, bought out said Abigal Sabin's claim, and she delivered the possession to your petitioners, and your
64 petitioners have remained in possession and control of said field ever since, and were in possession of the same on the 24th day of April, 1876. Your petitioners, after purchasing and paying for said improvements, afterwards took actual possession of the remainder of said southeast quarter of the southwest quarter and cleared off and fenced and improved the same, and was in continued possession of the same for more than twenty years previous to the 24th day of April, 1876, with exception of a small portion sold off to other parties which is hereinbefore set forth, and with the further exception of a few lawless trespassers whose tres-

passes will be hereafter set forth. Nearly all of the southwest quarter of the southwest quarter at the time of said entry was in the possession of Abigal Sabin, Lawson Runyon, Abraham Kempner, Mrs. Belding, Mrs. Julian, Patrick Burke, James Sumpter, Richard Puckett, Edward Mills, Jacob Sweiptzer, Samuel and Oney Macklin, Harrison D. Flowers, and E. G. Malone.

Abigal Sabin had at that time about ten or fifteen acres in the southeast corner of said southwest quarter cleared, fenced, and in cultivation, which, together with land adjoining that in the southwest corner of the southeast quarter of said southwest quarter, made a field from twenty to twenty-five acres, and said
65 Abigal had in addition thereto a small field between said field and Hot Springs mountain of about two acres, and had a lot of houses and stables about where the present residence of your petitioners is, all of which your petitioner, Wm. H. Gaines, bought of said Abigal Sabin and for which he paid the sum of seven hundred dollars, as will more fully appear by reference to a copy of Abigal Sabin's or Du Pas' agreement and receipt therefor, which is hereto attached and marked Exhibit "G," prayed to be taken as a part hereof; the original bill will be produced in evidence to the court. Your petitioner, Wm. H. Gaines, also paid E. G. Malone for his improvements, a house upon the west side of Main or Valley street, where the St. Louis saloon now stands. Lawson Runyon, Mrs. Belding, and Mrs. Julian surrendered their claims without any suit. Abigal Sabin had other claims that she refused to sell or surrender. Your petitioners, always desiring to deal fairly with all men, offered to pay all of said occupants for their improvements, but they refused to sell to your petitioners or to surrender to them, and on the 5th day of January, 1852, your petitioners brought suits in ejectment against Richard Puckett, Harrison D. Flowers, Samuel and Oney Macklin, Abigal Sabin, Patrick Burke, and James Sumpter, and in 1853 and 1854 the further suits in ejectment
66 against Jacob Sweiptzer, Abraham Kempner, Edward Mills, and Jacob W. Parker; said suits included all the property on both sides of Valley street from the now Guinn house property to the Earl house property and a mill on the east side of Hot Springs creek, just south of the Malvern crossing. This property was at that early day all enclosed, occupied, and improved; it had upon it mills, dwelling-houses, stores, hotels, livery stables, blacksmith and wagon shops, and various other buildings. Your petitioners, being legally entitled to the possession of said property by virtue of said patent certificate, recovered judgment for possession of all of said property in the years 1856 and 1858. On the 3rd of March, 1856, the clerk of Hot Springs county issued writs of possession upon said judgments, and on the 6th day of March, 1856, the sheriff put your petitioner, Wm. H. Gaines, into the possession of the mill-house and other improvements and lands occupied by J. W. Parker, on and east of Hot Springs creek, a copy of which writ is hereto attached, marked "H," and prayed to be taken as part hereof, and just north of the now Malvern crossing, and on the same day said sheriff put your petitioner, Wm. H. Gaines, into the possession of a dwelling-

house and outhouses occupied by Richard Puckett, which house and grounds were where the Hot Springs hotel now stands, a
67 copy of which writ is hereto attached and marked "I" and prayed to be made a part hereof; and on the same day said sheriff put your petitioner in possession of all the houses, buildings, improvements, and inclosures occupied by Harrison D. Flowers, which property included what is now occupied by G. L. Wilson and Central house, a copy of which writ is hereto attached, marked "J," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner, Wm. H. Gaines, into the possession of the dwelling-house and outhouses and inclosures occupied by Samuel and Oney Macklin, on the east side of Valley street, which property included the property now leased by Louis Bertsch and Wm. Staats, a copy of which writ is hereto attached, marked "K," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner into the possession of all the property occupied by Abigal Sabin's blacksmith shop and wood shop and other buildings, on the east side of Valley creek, which property included the property since leased to D. P. Beldin, J. W. Kimball, R. H. Colvin, and J. L. B. Caver by Wm. H. Gaines, and held and occupied by parties under said leases until and including April 24th, 1876, a copy of which writ is hereto attached, marked Exhibit "L," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner, Wm. H. Gaines, in possession
68 of all the enclosures, storehouses, and dwellings occupied by Patrick Burke on both sides of Valley street, which property includes the property since leased to Bell and McCarthy, Herman Moscowitz, Philip A. Helfrick, J. W. Brantley, John Kubler, Green Payne, and H. C. Anderson by Wm. H. Gaines, and held and occupied by and under said lease until and including April 24th, 1876, a copy of which writ is hereto attached, marked Exhibit "M," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner, Wm. H. Gaines, into possession of the inclosures, hotels, stores, and dwellings occupied by James Sumpter, on the west side of Valley street, which property includes the property leased to J. T. Chidester and Dr. O. A. Hobson and the open ground below Dr. O. A. Hobson's building and the ground occupied by Little and Jenkins on the west side of Valley street, and at the same time your petitioner had a judgment against said James Sumpter for one thousand dollars damages, and in consideration of your petitioner instructing the sheriff to return the execution satisfied the said Sumpter surrendered his lots and improvements he had possession of on the east side of Valley street to your petitioner and took a lease for the same, a copy of which writ is hereto attached, marked
69 "N." Said Chidester and Hobson held and occupied under said leases until and including April 24th, 1876, and on the — day of —— the sheriff of Hot Springs county put your petitioner, Wm. H. Gaines, into the possession of the lands, houses, and buildings occupied by Jacob Sweiptzer on the east side of Valley street, which property has since been leased by Fife and Houston and assigned to R. E. Allen and by Youley & Bro., and was occupied on

said leases from the said — day of —— until and including the 24th day of April, 1876, a copy of which writ is hereto attached, marked "O," and prayed to be taken as a part hereof; so your petitioner- avers that on the — day of —— they not only had the legal but actual possession of the southwest quarter of the southwest quarter of said section thirty-three; that the same was fenced and improved at that date; that it had on it improvements worth the sum of five thousand dollars; that your petitioners kept possession and control of the same from that date until and including the 24th day of April, 1876; that they kept the improvements in repair, and in 1859 and 1860 caused to be built a theatre upon lands near Valley street just south of where the bridge now crosses the Hot Springs creek; also built other houses below the theatre, where the Cohn house now stands. Your petitioners aver that they have resided
70 on the premises claimed ever since 1852, a period of over twenty-five years. Your petitioners file herewith a map showing the improvements on the premises claimed in 1860, marked Exhibit "S." Your petitioners also aver that, being in the lawful, legal, and actual possession of said premises claimed in the year 1856, your petitioner, Wm. H. Gaines, on the 6th day of March, 1856, leased all the houses and outhouses, bath-houses, stables, gardens, lots, etc., to James Sumpter that had been occupied by James Sumpter before Wm. H. Gaines recovered the judgment and was put into possession by writ of possession heretofore referred to and compromise heretofore referred to, except one storehouse and two rooms then occupied by A. Kempner; said lands, houses, outhouses, and bath-house, stable, and garden are more particularly described in the lease, a copy of which is hereto attached, marked Exhibit "R," the original having been lost or mislaid, and which are also shown by map, showing old improvements, both of which are asked to be taken as a part hereof; and your petition-rs also, on the same day and year, rented one store-room and two rooms to A. Kempner, a copy of which lease is hereto attached, marked Exhibit "P," and prayed to be taken as a part hereof; said store and two rooms leased
to Kempner occupied the ground now leased to J. T. Chi-
71 dester; and on the 8th day of December, 1857, your petitioners made the further lease of a part of the premises and improvements herein claimed to J. W. Parker, a copy of which lease is here*by* attached and prayed to be taken as a part hereof, marked Exhibit "Q," which lease included stables and buildings in the then forks of the road where the buildings commonly known as the Nichols, Vaughn, and Ducker building now stand; also a mill on the east side of the creek and north of the now Malvern crossing. All of said tenants occupied said premises under said lease until after the late civil war commenced, and said Sumpter renewed his lease until Hale was dispossessed by Gaines *et al.* Your petitioners aver that soon after J. W. Parker gave up possession of the premises between the then forks of the road they leased the same to John Sammons, who used a portion thereof for a blacksmith shop during the war, and it was reported to Maj. Gen'l Steele that John Sammons was in the habit of shoeing horses belonging to

guerillas, bushwhackers, &c., and a company of Federal soldiers were sent from Little Rock to Hot Springs to burn said shops and houses, and said shops and houses were burned in accordance with said instruction; and your petitioners are informed that afterwards various parties reported to Maj. Gen'l Steele, the Federal general commanding at Little Rock, that Mrs. Sumpter, the
72 widow of James Sumpter, was harboring, protecting, and feeding guerillas and bushwhackers in the houses that her husband, James Sumpter, had rented from your petitioner, Wm. H. Gaines, and Maj. Gen'l Steele sent another company from Little Rock to Hot Springs to burn said buildings, and said company did, in accordance with their orders, burn said buildings, together with the buildings that had been rented to A. Kempner, and which he had previously vacated; and they also burned at the same time the storehouse purchased of Malone. All of these buildings burned were the property of your petitioners. Your petitioners also aver that during the war the theatre building was destroyed and torn down by maraunders.

Your petitioners aver that during the late civil war there were very few persons that visited the springs for their health, and the buildings owned by your petitioners for the use and accommodation of visitors became old and dilapidated, and when the war closed your petitioners began to repair their buildings for the purpose of renting the same to the public, and in 1870, in order to accommodate the public and for the purpose of improving and making valuable their property that they had thus acquired, and that the Supreme Court of the United States had decided that they were
73 entitled to have possession of and which your petitioners honestly believed they were entitled to and would soon receive a patent for, they built, at an expense of twenty-four thousand dollars, the Hot Springs hotel, the first large, commodious, first-class hotel ever built in Hot Springs. They also built and purchased before the 24th day of April, 1876, several other buildings, used as offices, storehouses, restaurants, saloons, and dwelling-houses. Your petitioners also refenced the premises herein claimed and cleared off a large portion of the ground claimed and put it into cultivation. Your petitioners also made large improvements to the houses in which they live. Your petitioners aver that the improvements that they have made independent of the improvements made by tenants of your petitioners, and which improvements made by tenants are by law also the improvements of your petitioners, as will be fully set forth hereinafter, cost at least the sum of sixty thousand dollars; and your petitioners show and aver that they have spent in defending the right conferred upon them to the premises claimed by the United States in issuing said patent certificate the sum of at least thirty thousand dollars in costs and lawyers' fees, and that they have paid about six
74 thousand dollars taxes to the State and county upon said premises; that your petitioners having purchased said premises from the United States Government, and honestly believing that they had a title to the same, and knowing that if said prem-

ises were sold for taxes their adversaries would buy it in and try to evict them upon such tax title, they always paid the taxes assessed against them on said premises promptly, and your petitioners aver that they had such confidence that they would get a patent to the whole of said quarter section of land, and had such a desire to have no cloud upon their title that they paid $416.00 taxes only — days before the Supreme Court of the United States declared that no one was entitled to a patent for said quarter section. Your petitioners aver that they have paid out for improvements, taxes, costs, lawyers' fees, and travelling expenses in attending court more than one hundred thousand dollars. Your petitioners have leased at various times a large portion of the property herein claimed, all which your petitioners herein set forth. Your petitioners aver that they
75 are the claimants and rightful occupants of said lands claimed; that they have caused all the improvements to be made that have been made thereon; that no one else have made any improvements thereon in their own right, but all buildings erected and improvements made by other parties than your petitioners upon said claim, other than those recovered in law by your petitioners, were made as the agents and tenants of your petitioners, under an express contract, and said buildings and improvements thus erected are now, in fact, in law, the buildings and improvements of your petitioners, and were the buildings and improvements of your petitioners on the 26th day of April, 1876, and were not the buildings of any one else, and all parties pretending to claim the same are estopped, both in law and equity, from setting up that they made the same in their own right, and are estopped, both in law and equity, from setting up that they occupied the respective premises claimed in any other manner than as agents and tenants of your petitioners; and your petitioners again aver that they are not only both the rightful claimants and rightful occupants, but that they are the only parties since 1852 that ever occupied the same in their own right; and they aver that George Belding, Albert Belding, and Henry Belding
76 hav*ing* leased, assigned, transferred, and set over to your petitioners all their rights in and to said premises. Your petitioners again aver that they had, under a patent certificate from the United States, legally, peaceably, and uninterruptedly occupied said premises for more than twenty years previous to and including April 24th, 1876, and that they were the only parties that were upon the 24th day of April, 1876, occupying said premises in their own right. So your petitioners aver that, having once entered and paid the United States for the land claimed, which money the United States still retains, and having owned and made the first improvements on said premises, and having occupied in their own right and improved and caused to be improved in their own right said premises continuously and peaceably for more than twenty years previous to and including April 24th, 1876, and having paid taxes upon said lands for more than twenty years, and the Supreme Court of the United States having repeatedly decided that your petitioners were legally and rightfully entitled to the possession of

said lands and improvements, one of which decisions of the Supreme
Court of the United States, declaring that your petitioners
77 are entitled to the premises in their possession and to the
improvements made and caused to be made as against every-
body except the United States, has been rendered since the decision
of April 24th, 1876, and which decision the Supreme Court of the
United States say is in harmony with the decision of April 24th,
1876, that they are by the laws of the land in equity and good
conscience alone entitled to again purchase said premises from the
United States. Wherefore they pray that the commissioners shall
adjudge to them the right to purchase the said premises from the
United States and for other proper relief.

WM. H. GAINES.
MARIA GAINES.

GENERAL LAND OFFICE, *November 25th*, 1851.

GENTLEMEN: The papers accompanying your letters of the 18th and 24th March last in reference to the claims of the Hot Springs, in Arkansas, having been submitted to the Secretary of the Interior for his action on the legal point in the case, to wit, the reservation of the land by Congress, they were returned to this office for its decision on the respective merits of the pre-emption claims, irrespective of this question.

78 On the 26th day of August last this office returned the papers with its decision adverse to the claims of the heirs of John Percifull and in favor of that of the heirs of Ludovicus Belding, it agreeing with you both as to the establishment of the facts of cultivation in 1829 and possession on May 29th, 1830, and regarding the objections of the receiver, founded upon the opinion that those acts were performed as the tenant of another as not affecting the validity of the claim. On the 14th ult. this office received the opinion and decision of the Secretary of the Interior, dated the 10th of that month, in which he sustains the existing validity of the act of the 20th April, 1832, it not having been repealed or affected by any subsequent law, and that therefore none of the claims preferred for this land are of any legality. On the said 14th ult. an application was made by the attorney of the heirs of Belding for permission to make an entry of said claim in order that they may be placed in a proper position for the assertion of their rights hereafter in the courts, stating that of course under the decision of the Secretary they should not ask for a patent.

This was refused by this office, and an appeal from that
79 action taken to the Secretary of the Interior, who on the 21st
inst. addressed this office a letter, a copy of which is herewith
enclosed. In accordance with the directions of the Secretary therein
contained you are instructed to permit the "heirs of Ludovicus
Belding" to make payment for the S. W. qr. sec. 33, T. 2 S., R. 19
W., as containing 160 acres, and, in addition to the ordinary entry
thereof upon your books and the return to this office, you will note
the fact of its interference with the New Madrid location of Lang-
lois, of its embracing land directed to be reserved by act of 20th of

April, 1832, and that said entry is permitted under the Secretary's decision of the 21st November, 1851. Similar annotations will be made on the receiver's receipt and the register's certificate.

Respectfully, your obedient servant,

J. BUTTERFIELD,
*Commissioner.*

Register and receiver, Washington, Arkansas.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *November 21st*, 1851.

SIR: Upon consultation with the Attorney General, and after full consideration of the application of A. H. Lawrence, Esq., attorney for the heirs of Ludovicus Belding, one of the claimants to
80 the Hot Springs of Arkansas, on appeal from your decision of the 15th ultimo, against permitting said heirs to make entry under the acts of 29th May, 1830, and 14th July, 1832, I have concluded that it will be proper and in accordance with precedent to permit them to do so, and you will therefore instruct the register and receiver accordingly. Said entry will remain subject to the same power of revision and control by the General Land Office and this department as may be lawfully exercised over any ordinary entry. The Government will still hold the ultimate power of protecting its own rights, while the claimants will merely be placed in a position to contest the adverse claims of others to the same land.

I am, sir, respectfully your obedient servant,

ALEXANDER H. H. STUART, *Secretary.*

The Commissioner of the General Land Office.

No. 6545.

LAND OFFICE, WASHINGTON, ARKANSAS,
*December 19th*, 1851.

We, Maria Gaines, wife of William H. Gaines, late Maria Belding: Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, deceased, of Hot Springs county, Arkansas, do hereby apply to purchase the southwest
81 quarter of section thirty-three (33), in township two (2) south, of range nineteen (19) west, as containing one hundred and sixty acres, for which we have agreed with the register, acting under instructions from the Commissioner of the General Land Office bearing date 25th November, 1851, to give at the rate of one dollar and twenty-five cents per acre.

A. BELDING.
MARIA GAINES.
HENRY BELDING.
GEORGE BELDING.

I, William H. Etter, register of the land office at Washington, Arkansas, do hereby certify that the tract above mentioned is sold

as containing one hundred and sixty acres, as mentioned above, and that the price agreed upon is one dollar and twenty-five cents per acre.

WM. H. ETTER, *Register.*

NOTE.—In accordance with instructions, I note the interference of this entry with the New Madrid location of Langlois, of it embracing land directed to be reserved by act of April 20th, 1832, and that the entry is permitted to be made under the decision of the Secretary of the Interior of November 21, 1851, transmitted to this office by Commissioner of General Land Office under date of 25th November, 1851.

W. H. ETTER, *Register.*

REGISTER'S OFFICE, WASHINGTON, ARKANSAS,
*January 19th*, 1852.

82 I, William H. Etter, register of the land office at Washington, Arkansas, do hereby certify that the foregoing pages contain a true copy of the letters received from the Commissioner of the General Land Office, the application filed, and the annotation on the tract book in this office made under said instructions.

WM. H. ETTER, *Register.*

No. 6545.

RECEIVER'S OFFICE AT WASHINGTON, ARKANSAS,
*December 19th*, 1851.

Received from Maria Gaines, wife of William H. Gaines, formerly Maria Belding; Albert Belding, Henry Belding, and George Belding, the heirs and legal representatives of Ludovicous Belding, deceased, of Hot Springs county, in the State of Arkansas, the sum of two hundred dollars in full for the southwest quarter of section thirty-three (33), in township two (2) south, of range nineteen west, containing one hundred and sixty acres (160), according to the return of the surveyor general, at $1.25 per acre. According to instructions I note that this entry interferes with the New Madrid location of Francis Langlois on the same lands, and also it embraces lands directed to be reserved by the act of Congress of the 20th April, 1832, and is only permitted to be made under the de-
83 cision of the Secretary of the Interior, under date of November 21st, 1851, and the instructions of the Commissioner of the General Land Office, under date of November 25th, 1851, in accordance with said decision.

$200. B. F. HEMPSTEAD, *Receiver.*

*Receiver's Receipt, December 19th*, 1851, *for* $200, *Entrance Money for Hot Springs Quarter Section* (S. W. — 33, T. 2 S., R. 19 W.), "*G.*"

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *December 23rd*, 1873.

I, W. W. Curtis, acting Commissioner of the General Land Office,

do hereby certify that the annexed copy of the tract book showing the Washington, Arkansas, cash entry No. 6545, of Maria Gaines *et al.*, is a true and literal exemplification from the records of this office showing that said entry has not been cancelled.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above mentioned.

W. W. CURTIS,
*Acting Commissioner of General Land Office.*

(Part of section), S. W. ¼; (section), 33; (township), 2 S.; (range), 19 W.; (acres), 160; (rate per acre, dollars, cents), $1.25; (purchase-money), $200.00; (name of purchasers), Maria Gaines, late Maria Belding; Albert Belding, Henry Belding, and George
84 Belding, heirs of L. Belding; (date of sale), 1851—December 19; (number of receipt and certificate of purchase), 6545.

*Abstracts of Land Sold in the Land Office to —— from the — Day of —— to the — Day of the Same Month, Inclusive.*

(When sold), 19th December, 1851; (number of receipt and certificate), 6545; (by whom purchased, name), A. Belding, Maria Gaines, H. Belding, and George Belding, Hot Springs, per act of 20th April, 1832; (tract purchased) (section *or* part of section), (S. W. quarter, whole of); (number of section), 33; (number of township), 2 S.; (number of range), 19 W.; (quantity acres), 160; (price per acre) (dollars, cents), $1.25; (purchase-money) (dollars), $200; (section 33), township 28, range 19 W.; reserved by the order of the President May 16th, 1839, for —— ——.

UNITED STATES LAND OFFICE,
CAMDEN, ARKANSAS.

I hereby certify that the above and foregoing is a true and full copy of the tract book in relation to section thirty-three, township two south, of range nineteen west, as the same remains in this office.

Given under my hand this second day of January, 1874; and I am unable to find in this office any instruction to this office from the Secretary of the Interior or from the Commissioner of
85 the General Land Office, at Washington, D. C., to cancel the above entry of Belding and Gaines; therefore said entry is not cancelled, upon the records in this office, the 13th day of January, 1874.

N. N. RAWLINGS, *Register.*

STATE OF ARKANSAS, } *To wit:*
*County of Hot Springs,* }

The State of Arkansas to the sheriff of Hot Springs county, Greeting:

Whereas on the second day of March, A. D. one thousand eight hundred and fifty-four, at our circuit court of Hot Springs county, by the consideration and judgment of said court, Wm. H. Gaines

and Maria Gaines, his wife; Albert Belding, Henry Belding, and George Belding recovered against Patrick Burke the sum of one hundred dollars, as well as the possession of certain lands and tenements situated in said county, namely, all that part of a certain tract or parcel of land known and described on the plat of the public survey as the southwest quarter of section thirty-three, in township two south of range ninetween west, described as follows, to wit: All that portion of said quarter section enclosed by the fence or enclosure now surrounding on three sides a certain tenement known as Burk's storehouse, including the land on which said storehouse is situated, the said store-
86 house being — what is known as Hot Springs valley, fronting on the west side of the stage road leading from the Hot Springs to Little Rock, and also a certain tenement now occupied by one Jacob W. Parker, including all the land enclosed by the fence now surrounding the same, and all the enclosures adjoining and connected with the same, the said last-mentioned tenement and enclosures being below and south of the point where the stage road crosses the Hot Springs creek west of said stage road and between that road and the road leading south from Hot Springs to the Washita, which was adjudged to them for their damages sustained in that behalf expended, and which costs are taxed and amount to the sum of twenty-two dollars and eighteen cents: You are therefore commanded that you forthwith deliver to the said Wm. H. Gaines and Maria Gaines, Albert Belding, Henry Belding, and George Belding possession of the premises above described; and you are further commanded that of the goods and chattels, lands and tenements, of the said Patrick Burke you cause to be made and levied the damages, together with costs aforesaid, and that you have the said damages and costs before our said circuit court, at the next February term thereof, on the second day of said term, and
87 you then and there certify how you have executed this writ.

In testimony whereof I, R. Striblong, clerk of the said court, have hereunto set my hand and (L. S.) affixed the seal of the said court this 23rd day of November, 1857.

R. STRIBLONG, *Clerk.*

I do certify that I have executed the within by putting the within-named Wm. H. Gaines in possession of the within-described property on the 26th day of November, 1857, as I am within commanded and the within named; and I further certify as to within-named damages of one hundred dollars, &c., I did not levy the same of the goods and chattels, lands and tenements, of said defendant Burk as I am within commanded because as to said damages I was enjoined and restrained by writ of injunction issued in that behalf by the clerk of Hot Springs county upon a bill filed by said Burk and others for that purpose this Feb'y 15th, 1858.

JOSEPH JESTER, *Sheriff.*

In the Matter of the Claim of Wm. H. Gaines and Maria Gaines, No. 784, Consolidated with Sundry Other Cases.

Monday, *February 11th*, 1878.

*Forenoon Session.*

Come now the claimants, William H. Gaines and Maria
88 Gaines, by their attorney, Hamilton Benjamin, and offer in evidence in support of their claim the following, to wit:

1. Certified copy of a transfer by Nancy Moore on the 3rd day of March, 1829, to Alexander L. Rogers, and assigned by said Rogers on the 5th day of December, 1829, to Wm. H. Moore, and on the 4th day of March, 1830, assigned by said Moore to L. Belding.

2. Certified copy from the records of the General Land Office of an application to the Secretary of the Interior by the attorney of the Belding heirs to purchase a certain quarter section of land in the Hot Springs Mountain reservation, together with the endorsement of the Attorney General in favor of the right of said Belding heirs to enter said land.

3. Instruction of the Secretary of the Interior, dated November 21, 1851, to the Commissioner of the General Land Office in regard to allowing said Belding heirs to enter said land.

4. The instruction of the commissioner of public lands, under date of August 20, 185–, in the form of a letter.

5. Copy certified by the register of the land office of the instructions issued by the Commissioner of the Land Office.

6. The application of the heirs of Ludovicus Belding to purchase and enter the southwest quarter of section 33, township 2 south, 19 west.

89 7. Receipt of the receiver of the land office, B. F. Hempstead, No. 6545, dated December 19th, 1851, for $200, for patent certificate for the southwest quarter of said section 33, township 2 south, 19 west.

8. Bill of sale of improvements of Abigail Dupas, late Abigail Sabin, dated March 25, 1852, to William H. Gaines.

9. Certified transcript of a judgment rendered in the Hot Springs circuit court at the February term, 1858, in favor of William H. Gaines *et al.* and against Jacob Sweiptzer.

10. Certified transcript of a judgment rendered in the Hot Springs circuit court on the 25th day of February, 1856, in favor of William H. Gaines and others and against Jacob Sweiptzer.

11. Certified transcript of a judgment of dismissal of appeal in the supreme court of Arkansas, dated February 18th, 1860, in case Wm. H. Gaines *et al. vs.* Jacob Sweiptzer, said judgment being the same rendered in the circuit court of Hot Springs county at February term of 1858.

12. Certified transcript of the record entry of the supreme court of Arkansas on appeal in said cause, dated July 6th, 1857, being in the case wherein judgment was rendered on the 25th day of February, 1856, in the Hot Springs circuit court.

90 13. Certified transcript of record entry in the Supreme Court of the United States in same case, December term, 1859.

14. Certified transcript of record in the supreme court of Arkansas in same case, dated in 1860.

15. Certified copy of record entry of the supreme court of Arkansas made on the 18th day of February, 1860, in the cause wherein judgment was rendered on the 25th day of February, 1856.

16. Certified copy of a judgment rendered on the 15th day of February, 1858, in the Hot Springs circuit court, in favor of Wm. H. Gaines *et al.* against Abraham Kempner, being the same incorporated with the petition of William H. and Maria Gaines, No. 784.

17. Certified transcript of the record entry of the supreme court in same case, appealed, made on the 18th day of February, 1860.

18. Certified transcript of record entry in suit in ejectment of William H. Gaines *vs.* Edmund Mills and Roxana Butler in Hot Springs circuit court, made February 25th, 1856.

19. Certified transcript of record entry of the supreme court of Arkansas in the case of Edmund Mills *et al. vs.* William P. Gaines, dated July 6th, 1857.

20. Certified transcript of record entry of the Supreme Court of the United States, on appeal of same case to that court, made
91 on the 9th day of January, 1860.

21. Certified transcript of record entry in the supreme court of Arkansas in same case, dated February 18th, 1860.

22. Certified transcript of record entry of the Hot Springs circuit court, in 1856, showing judgment against John C. Hale in favor of William H. Gaines and others, together with certified transcript of three record entries in same cause in the supreme court of Arkansas; also certified transcript of record entry in same case in the Supreme Court of the United States. (Messrs. John M. Harrell and W. P. Walsh enter their several objections to the admission of the foregoing transcripts in behalf of sundry claimants represented by them.)

23. Certified transcript of record entries in the supreme court of Arkansas in the case of Henry M. Rector *et al. vs.* Wm. H. Gaines *et al.*, together with a certified transcript of record entries made in the Supreme Court of the United States in the same cause.

24. Certified copy of record entry in the Supreme Court of the United States, December 2nd, 1859, in the case of William H. Gaines *et al. vs.* Loretta T. Hunter.

25. Certified transcript of judgment rendered in the Hot Springs circuit court on the 25th day of February, 1856, in favor of
92 William H. Gaines *et al. vs.* James Sumpter.

26. Writ of possession in case of Patrick Burke *vs.* Wm. H. Gaines *et al.* in the supreme court of Arkansas.

27. Certified transcript of record entries in the supreme court of Arkansas in the case of Loretta T. Hunter *vs.* Wm. H. Gaines *et al.*, July term, 1855.

28. Writs of possession, with the sheriff's return thereon endorsed, in case of Wm. H. Gaines *et al. vs.* J. W. Parker, Hot Springs circuit court, March 3rd, 1856, returned same day.

29. Writs of possession and sheriff's return thereon in case of Wm. H. Gaines *et al. vs.* J. W. Parker, in the Hot Springs circuit court, issued March 3rd, 1856, and returned March 11th, 1856; also writ of possession and sheriff's return thereon in the following cases, in all whereof Wm. H. Gaines *et al.* were plaintiffs, to wit: Richard Puckett, issued March 3rd, 1856, returned March 10th, 1856; Harrison D. Flowers, issued March 3rd, 1856, and returned June 16th, 1856; Samuel Macklin *et al.*, issued March 3rd, 1856, returned March 10th, 1856; Abigail Sabin, issued March 3rd, 1856, returned May 1st, 1856; Patrick Burke, issued November 23rd, 1857, returned Feb'y 15th, 1858; James Sumpter, issued March 3rd, 1856, returnable March 10th, 1856; all of which are certified by the clerk of Hot Springs county in 1858. (John M. Harrell and W. P. Walsh severally in behalf of sundry parties represented by them object to the admission of the above-described writs.)

93 WILLIAM H. GAINES, being first duly sworn, testified as follows:

Questions by his attorney, H. BENJAMIN:

1st Q. State your name, age, and residence.

A. Wm. H. Gaines; age, 80; residence, Hot Springs.

2nd Q. State to the commission in your own way the general history of this case.

—. My name is Wm. H. Gaines, 80 years of age, and have kept house here for the last 25 years. I am one of the claimants in claim No. 784. I married one of the heirs of Ludovicus Belding in the year 1849. I do not recollect what year it was, but think it was about the year 1851, I went to Washington to investigate all the claims on the Hot Springs property. I found Mrs. Belding had proved up a pre-emption in the year 1839, and came to the conclusion that she had the best title of the three claims I found in the Land Office. I employed A. H. Lawrence to investigate those claims, and came to the conclusion to prosecute the claim of the Belding heirs, and made application to the Secretary of the Interior to have that claim referred back to the district land office to be reproved up, clothing the other claimants with authority to examine, disprove, or invalidate the testimony if they saw fit. I do not recollect exactly what time we were in Washington, but think it was in the summer or fall of 1850. It was referred back to the district land officers to be reproved and investigated, and on the 22nd of January, 1851, Lydia Belding, widow of Ludovicus Belding, relinquished her right in favor of her children, the heirs of Ludovicus
94 Belding. The proof was taken up and well cross-examined by Rector and Hale. When the proof went to Washington her attorney made application to enter the land, which the Commissioner of the Land Office refused, and he appealed to the Secretary of the Interior. The Secretary of the Interior first decided against the entry, and we appealed to the Attorney General. The Secretary of the Interior in his letter to the Commissioner, after a full consideration and consultation with the Attorney General, came

to the conclusion that it was right and proper to admit the entry of the Belding heirs, and directed him to so instruct the district land officers in Arkansas. He did so instruct them, and the entry was made in the name of the four heirs, and I advanced the purchase-money, the sum of two hundred dollars, which was paid to the Government and which the Government still holds. It has never been repaid to the heirs. When I entered this I received a patent certificate in the name of the heirs for the southwest quarter of section 33, township 2 south, range 19 west, in the State of Arkansas. After getting the certificate of entry I came directly to the Hot Springs and purchased of Abigail Sabin all her improvements east of Hot Springs creek, which included all the improvements east of said creek except a small house occupied by Richard Puckette, where the Hot Springs house now stands, and a small cabin above the Puckette house and a cabin and mill near the now Malvern
95 crossing and an enclosure below the Malvern crossing and between the Malvern road and Hot Springs creek of Patrick Burke. Said Abigail Sabin's improvements consisted of a lot of cabins, cribs, stables, gardens, and lots where and near where I have since resided at the springs, and also included two springs on the mountain and a large field east of the New Malvern road and south of the now Gaines avenue, making in all 20 acres, more or less. These improvements purchased, with the exceptions named, were all the improvements that were on the south half of the southwest quarter of section 33, township 2 south, range 19 west, east of the Hot Springs creek. These fields were all enclosed with fences when I bought them, and had been in cultivation apparently for several years, and have been occupied by me and kept fenced ever since—from the time of said purchase up to and including the 24th of April, 1876—and a large portion of the time I have had them in cultivation. At that time there was no one living on this quarter section, east of the improvements I bought of Mrs. Sabin, and continued to be none until after the close of the war. I took charge of the land and prevented people from cutting timber as long as I could keep them off, and paid taxes on it from the time it was entered to the date of the decree. The improvements that were excepted were right along on the creek bank. The west side of
96 Hot Springs creek, at the time of making this entry, was in the possession of Lawson Runyon, Abraham Kempner, Mrs. Belding, Mrs. Julian, Patrick Burke, James Sumpter, E. G. Malone, Edmund Mills, Harrison D. Flowers, Abigail Sabin, Sam. and Oney Macklin, and Jacob Switzer, and on the 5th of January, 1852, in the name of myself and Belding heirs I commenced suits of ejectment in the Hot Springs circuit court against Richard Puckette, Harrison D. Flowers, Patrick Burke, Abigail Sabin, James Sumpter, and soon thereafter I commenced suits against Jacob W. Parker, who was in possession of the mill and cabin, and Edmund Mills, James Switzer, and Abraham Kempner. I recovered judgment in the first lot of cases commenced in 1856, and writs of possession were issued on said judgments and I was put in possession of the property. I afterwards recovered judgment in the other cases and was put in posses-

sion of the property, most of it on the 6th of March, 1856. I continued in possession of said property until dispossessed by the decision of the Supreme Court of the United States, April 24th, 1876. During that time several parties tried to jump my possessions, but I have always applied to the court and dispossessed them. The improvements claimed by E. G. Malone I purchased soon after I bought out Abigail Sabin. I repaired the cabins, lived
97 in them three or four years, and then built my dwelling-house that my family has resided in and occupied up to last December. Soon after I purchased of Abigail Sabin I enlarged my fields and repaired and built new fences and took in ten or twelve acres more of ground on what is now the north side of Gaines avenue. Soon after I was put in possession by the writs above named I commenced building new hewed-log cabins. I built three double log cabins and afterwards built one more log cabin joining the property that had been occupied by Mrs. Julian. On the west side I enclosed it all with a good fence, on the east side of what is now Valley street, commencing near the bridge that crosses the creek south of the Hot Springs hotel and extending down to about two feet into the now Cohn building. Mr. Turnbull put up a theatre one hundred feet long, forty feet wide, and seventeen feet high. George Belding and I purchased this theatre of Turnbull in 1859, and George Belding afterwards sold his part of the house to me, and below the theatre, the same fall, I built a large room for a dining-room, and put up two good size log rooms in front of the dining-room with a hall between them, about six feet south of the south end of the theatre, and cut the theatre up into, I
98 think, thirty-two bed-rooms, afterwards making a two-story house for the purpose of boarding-house or hotel. About this time I enclosed all below the property that had formerly been occupied by Switzer between the street and the creek, west of the creek, down to the section line, and made a kiln of brick there. I made no other improvements of importance until after the close of the war. At the beginning of the war, including the houses that I purchased and recovered by suits of ejectment and built myself, I had twenty houses, one mill, one house used for a hotel, and one of the twenty houses was a row of houses of ten or eleven rooms that I recovered from Sumpter. During the war the hotel house, formerly the theatre, was destroyed by marauders and trespassers, so that I had to tear down the remnants to save what lumber there was. During the war the improvements that I had recovered of Burke that were on the east side of the road where the Nichols, Vaughn, and Ducker buildings now stand were destroyed by fire; they were burned by Federal troops. These troops also burned the row of houses recovered from Sumpter, and also the house that I purchased of Malone. In the spring of 1865 Mrs. Gaines fenced in nearly all the ground recovered from James Sumpter east of the
99 now Sumpter house. The houses formerly upon this ground were burned during the war. I had a number of the old houses that were left standing repaired so as to make them tenantable. Soon after repairing the old houses I caused to be fenced up

all the property between the Malvern road and Hot Springs creek down to the line to be used for a brick yark, and had the fences repaired for the fields that I had before the war, and cultivated and occupied the same until after the decision of April 24th, 1876. In 1870 Mrs. Gaines, one of the petitioners, built the Hot Springs hotel, which was the first fine hotel ever erected in Hot Springs. It cost about twenty-four thousand dollars and was the principal and leading hotel until the Arlington was built. The same year I built the house now held, under a lease from the receiver, by William Staats and also claimed by him before this commission, the said house being situated the second house below the Malvern crossing, on the east side of Valley street. This house cost five hundred dollars. In 1871 I built the barber shop north of the Hot Springs hotel, which cost about one hundred and fifty dollars. I also built the office south of the Hot Springs hotel now occupied by
100 Dr. Taylor, which cost about four hundred dollars. I also, the same year, built the bakery, the first building south of Dr. Taylor's office, which cost about four hundred dollars. Soon after this year I built the house south of the now Malvern crossing, which is now held under a lease from the receiver and claimed by Rachael Bertsch. I next built the house and stables south of the now Cohn house, and which are now held, under a lease from the receiver, by Thall and others. These buildings cost about six hundred dollars. The next building south of the stable I bought from Cloves. This building is now held by Julius Breytie under a lease from the receiver, and is also claimed by Breytie before this commission. I soon after bought of Leeson the house on the west side of the street just south of the house of Sutton, the cost of which is estimated at a thousand dollars. I also built three cottages north of the cemetery, which cost six hundred dollars apiece. I also built two storehouses south of the Garland house, which cost about nine hundred dollars. I also built two cottages on the Malvern road nearly west of the cemetery, one costing six hundred dollars, the other three hundred. I also bought a house of N. H. Cloves south of these two cottages on the Malvern road for three hundred dollars. I also bought a blacksmith shop on the Malvern road. I also bought a stable of Mr. Bell on the
101 Benton road. In the year 1874 I fenced all north of the Benton road to near the east line and to what I supposed to be the east line and north on the east line away up into the mountain and thence west to include the hot springs obtained from Abigail Sabin. This fence made a complete enclosure of all the ground now claimed by me north of the Benton road. This was a good, substantial fence, except some portion of the mountain, where it was impossible to make a first-class fence. In addition to buildings put up by the petitioners in person I made fifty or sixty leases or contracts to various persons to put up buildings on the ground claimed and occupied by me. In a large portion of these cases my old buildings had to be torn away to make room for better buildings. I enlarged my residence by building eight rooms, which cost me about sixteen hundred dollars. I have resided continuously

upon the property claimed in the petition ever since the year 1852 until December last, a period of about twenty-six years, and during all that time the petitioners are the only ones that have occupied this ground as their own except a few negroes in the southeast corner of the quarter section, who have been holding adversely to your petitioners. With this exception there has been no one since I recovered these lands, in the year 1856, who has lived upon any portion of it and claimed or occupied the same as their own.

102 Your petitioners are and have been all this time the sole occupants in their own right. All other parties, with the exception of the negroes referred to above, that have lived upon the same have done so under contracts with your petitioners, recognizing and treating them as landlords. During all this time I believed that I had the title to said lands and have paid taxes upon said lands ever since I entered and paid for the same at the United States land office. I know of no one else that has paid any taxes upon said lands or ever pretended to give them for assessment. I so strongly believed that this property was mine and that I would get a title to it that I paid the taxes for the year 1875 only a few days before the decree of April 24th, 1876. I have been a *bona fide* occupant of these lands for more than a quarter of a century, and during that time I have exercised and had the same control over the lands claimed that any person could or would exercise over lands that they held a patent for from the United States. When A. O. Morgan, the United States receiver, took possession I was the first man on the reservation to turn over my property to him. I turned over all property held by myself, both that held in person and that held by my tenants.

103 Cross-examined by JOHN M. HARRELL, representing No. 1, claim of Algernon S. Garnett, M. J. Towle and wife, James O. Ducker, Rachel Burch, and sundry other conflicting claims:

3rd Q. You say your fence north of the Benton road fell short of the section line?

A. Yes.

4th Q. How far?

A. I cannot say exactly.

5th Q. Did it go beyond the ground of James O. Ducker?

A. Yes; it enclosed that ground.

6th Q. You use the word "enclosed," understanding what it means, and deliberately, do you?

A. Yes; I had it all under fence.

7th Q. Did you not merely build a line of fence between him and the road and stop there?

A. I enclosed every inch of that ground.

8th Q. You had Mr. Ducker under arrest for trespass about 10 days, had you not?

A. Yes; I had some trouble with him. He broke my fence down.

9th Q. Did you take the lumber that he had on that ground and appropriate it to your own use or cause it to be appropriated?

A. No, sir.

10th Q. What did you do with the posts he put there?

A. I never had anything to do with them. I do not know who removed them. I think I stopped him by injunction.

104 11th Q. How many buildings do you say you had possession of just before the war?

A. About 20.

12th Q. Where did they stand?

A. The theatre building stood south of the Hot Springs hotel, for one. I have mentioned all these places already in my testimony.

13th Q. They were destroyed during the war by fire?

A. Yes, sir; the theatre was getting destroyed by their tearing doors down, and so on, and there was a great deal of good lumber in it, and I tore it down to save it from being destroyed.

14th Q. Which of the buildings were not destroyed?

A. My dwelling-house was not. The church was not destroyed. Above there there were some few cabins along where the Citizen's stable is, from there down to the St. Louis saloon, that were destroyed. The buildings that I put up previous to the war, along down the lower end of the valley, were not destroyed. On the west side of Valley street there were 8 log cabins that I built that were not destroyed. There were three double ones and one with two rooms in it, making eight rooms in all. They commenced down about where Smith's mattress-house is and ran up north. They were about 20 feet apart.

Q. Are those buildings there yet?

105 A. No, sir; they were torn down in order to lease the ground. Some of them fell down, and I may have hauled them off or given them away. They ran up to the new Malvern crossing, and the north one a little higher, maybe.

Q. When did you fence in from the Malvern crossing down to the section line?

A. In 1858, after I built the log cabins. I fenced along in front of them, leaving a space between the fence and the cabins of 8 or 10 feet. It was plank fence; it was burnt up and torn away during the war.

Q. Did that fence form an enclosure?

A. Yes.

Q. Was there another fence in the rear of the house?

A. Yes; there was a rail fence between the Sumpter ground and the Burke ground.

Q. Whose property did you claim that to be in 1858—those cabins and that fence?

A. I was acting as agent for the Belding heirs, but I claimed the house that I put up as my own. They were put up and purchased with my own money.

Q. Those 20 houses that were standing there just before the war you claimed as the property of the Belding heirs, did you?

A. No, sir.

Q. Which of them did you claim as your individual property?

106 A. My residence and those log houses that I built.

Q. Did you claim the old theatre?

A. Yes; and the log houses south of the theatre. I built them—that is, on the east side of Valley street.

Q. State what you think those houses and all the property claimed by you was worth at that time.

A. The theatre cost me $1,700; the log houses south of it—I worked on them with my own hands—they are, all together, worth about $500, on the theatre side of the street.

Q. What were those buildings that were on the other side of the street worth, from the mattress-maker's up?

A. Labor was cheap when I built them; they were simple log cabins, one room, 16 or 17 feet square.

Q. Which was the most valuable improvement you owned at that time?

A. The dwelling-house.

Q. Which next?

A. The theatre.

Q. Did you own any other valuable improvement at that time besides the log houses, the theatre, and the dwelling-house?

A. Yes; the field that I bought of Mrs. Sabin. It is south of Gaines avenue—the biggest field. The north line of the fence

107 ran in Gaines avenue; on the west it ran out to the Malvern road; on the south to the line of the southwest quarter of section 33. The east line of the field was out somewhere beyond, where a colored man named Thal lived at that time. It was much bigger than it is now, because part of it ran down into section No. 4. I think more than half of it was in section four. It included where that house was and several other lots up there. My purchase included lots around my present dwelling-house and a little field, in woods, where the cemetery is. I fenced in 10 or 12 acres north there and drew the fence in so as to turn over to Mrs. Sabin what was outside of what I entered. I drew the line in on the east to make it more square. I fenced in what lies north or Gaines avenue a year or two after I bought it, as soon as I knew where the lines were.

Q. Was it enclosed when you bought it?

A. It was.

Q. What did you consider it worth?

A. I paid $700 for it. I consider it worth all of that.

Q. What other valuable property did you own at that time?

A. I have stated all about that. I had a kiln of brick made on the east side of Valley street, between that and the creek.

108 That was the first brick-kiln I had made; that was made before the war. After the war I contracted with Cloves to make brick for me and gave him a percentage of what brick he made. On that thin strip of ground, where the Cincinnati house burned down and where the Surprise house stands, was made two kilns of brick, and that was done since the war.

Q. Which was the property of the Belding heirs?

A. I have a transfer from them; it is all mine.

Q. Were those transfers made prior to your petition in bankruptcy?

A. Very recently; since they have been hunted up to give me trouble.

Q. Did you put in any of this property in your petition in bankruptcy?

A. I did not. I consulted my lawyer, Judge Watkins, who knew all about it, and he said it should not go in. I went through bankruptcy and was honorably discharged seven or eight years ago.

Q. When did you file your petition in bankruptcy?

A. I cannot recollect the date.

Q. Did you transfer it then to the Belding heirs?

A. No, sir.

Q. You did not see proper to claim it when you went into bankruptcy?

A. I did not.

Q. You bought certain improvements that were erected?

A. Yes.

109 Q. Were they within these enclosures that you speak of?

A. Yes; all except the part of Mrs. Sabin's field, which I gave back to her.

Q. In whose right do you make your claim now to this property?

A. In the right of Maria Gaines and myself.

Q. Did the Belding heirs file any petition?

A. No, sir; I am controlling it all myself.

Q. Where was this Cloyes house that you bought?

A. Part of the brick yard there.

Q. Where was the blacksmith shop?

A. It is there now. I bought it from Cloyes. It was considered in the $300. There were some improvements that he had put on it that I bought of him. It was considered in the $300.

Q. You say that since you recovered these lands, in 1856, no one has resided on them except yourself or owned them?

A. I do not think that anybody has ever claimed them in their own right as we have.

Q. What lands are referred to in your petition?

A. The southwest quarter of section 33, township 2 south, — 19 west.

Q. How do these people happen to be there unless they have resided on it?

A. They were not there in their own right.

Q. Some of them have built improvements upon it, have they not?

110 A. Yes.

Q. And without your assistance?

A. They generally leased the ground from me.

Q. Did M. W. Towle lease any from you?

A. He made a bargain with my agent to lease it. I have no written lease.

Q. Did you contribute any money to the building of the improvements erected on that ground by Mr. Towle or give him any assistance of any kind?

A. No, sir.

Q. Who built the Salmons house, near the Methodist church, that Mrs. Burch lives in?

A. Allen Salmons.

Q. Did you agree with him to let him have that 20-feet alleyway leading down from his house?

A. No, sir; I might have agreed to let him use it. He agreed that he would keep off of the quarter section, and I believe he did. I do not think it is on that quarter section at all.

Q. The new Valley house, now used as the court-house, did you contribute any money or any assistance to the erection of that building?

A. Yes, sir; I loaned the old man fifty dollars, and he said he wanted to put it in that building.

Q. Did you know him very well?

111 A. He had been a very good tenant and paid punctually and he leased the ground. I have his note for $50 for the money I lent him. He wanted to keep it, and I told him to keep it awhile.

Q. His note is out of date, is it not?

A. I do not think it is.

Q. That is all you had to do with erecting that house?

A. Yes.

Q. The house of Mr. Ducker, the three-story house on the corner of Malvern crossing, did you contribute money or assistance to the erection of that house?

A. No, sir.

Q. The stable that Gillis had and sold there, did you contribute any money to build that or any means of any kind?

A. Yes; I furnished all the lumber.

Q. You have stated all the buildings you have erected since the war, have you?

A. Yes; I aimed to name every one that I erected. I show vouchers for the building and leasing my house to Burch, and so on. Then it was turned over to the receiver. He has held possession. Those are the houses I built myself. The Gillis property was built by me under written contract.

Q. Did you make any distinction in your testimony between the buildings you erected and those built by old tenants?

112 A. I have not said a word about my tenants' building; only that I had 50 or 60 tenants who leased. I described my own buildings.

Q. You said in your testimony that you were the first man that turned over that property to the receiver. How did you turn it over?

A. I had an interview with Mr. Morgan, in which he told me that he would live up to the instructions of Judge Gray, and that my tenants should have the preference in the right to lease. I thought

maybe I could get a chance to lease my houses. I tried him the second time, and he was very positive that my tenants should have the preference. I told him I would throw no obstacle in his way, and that if he would send his clerk around with me we would go around, and I would show him every house I owned and tell him who lived in it and turn them over to him, which was done. Captain Peck went around with my son, who was attending to the collection of the rents for me, and he turned the houses over to him. My tenants then leased from the receiver. The houses were not turned over to the tenants.

Q. The receiver preferred to lease the ground to the occupants?

A. Those were his instructions.

Q. What did you lease from the receiver?

A. I first leased my dwelling-house—my wife did.

113 Q. How much property did you lease in connection with your dwelling-house?

A. There was a little difference between Mr. Morgan and me. I got him to make out the application himself in his own handwriting. I meant it to include all my lots, but he never would give me the lease. I paid the monthly rent that he put on my dwelling-house—all that was under fence. I told him I wanted to take a lease for the whole of it, but he did not want to give it to me, but he never leased it to anybody else. People came to me to lease from me, but I never had any transaction since, except to sell Mr. Wilson a stable. I do not know whether it was a few days before the decision of the Supreme Court or a few days afterwards. I disclaimed owing anything till the act of Congress was passed giving me a show for my possessions there.

Q. You leased your residence at first?

A. I rented it. Afterwards, as the tenants went away, some cottages that I had I offered to Mrs. S. H. Stitt and let her lease them. At the north end of the cemetery there were three cottages and 2 store-rooms, and it may have included this Surprise house. I am not sure but there were six in all. They were on the east side of the creek. I leased those; then I leased three houses to

114 Albert Gaines, Dr. Taylor's office, and the Smith house, on the west side of Valley street, the two cottages and the Cloyes house to Mrs. Williamson.

Q. What two cottages were those?

A. They were the two lying between the Malvern road and Hot Springs creek, opposite the cemetery. Those cottages Mrs. Williamson, my daughter, leased, at my request, from the receiver They were given to her. I bought a little shanty that was back o the Burch house; that was his own transaction. I think he leased that from the receiver.

Q. You say you have filed in this case the transfer from the Belding heirs to yourself?

A. I will do it. I have the conveyance of recent date. One was signed in Texas and the other here. Albert Belding signed his, George signed his, and Henry signed his. It has been within the last three months.

Q. Your plat shows how far your line runs, does it?
A. Yes; it includes Wilson's stable, the Hot Springs hotel, and the barber shop this side.
Q. Did you pay any taxes on this property in your own name?
A. No, sir; in the name of the Belding heirs.

Questions by Mr. CURL, representing Sumpter, Kemper, and other claimants:

Q. State if you acquired any possession west of Hot Springs creek originally by virtue of purchase, or was it all by virtue
115 of the Beldin heirs' certificate of entry.
A. I bought the Malone house, that covered the ground where the St. Louis saloon now stands, in 1852, soon after I bought Mrs. Sabin's ground.
Q. Any others?
A. No, sir; not on that side.
Q. Then the balance of your possessions on that side were acquired by virtue of the certificate of entry of the Belding heirs?
A. No, sir. I took possession of the vacant ground and built those log cabins.
Q. My question is if the balance of the possessions you acquired on the west side of the creek were acquired by virtue of the entry of the Belding heirs.
A. Yes; except that there was a good deal of vacant ground that I took possession of there.

Re-examined by Mr. BENJAMIN:

Q. State whether some of the ground occupied by Mr. Runyon and Mrs. Beldin was not turned over to you by agreement without suit.
A. Yes; that was vacant ground. Mrs. Beldin had a house this side of the well and Runyon had a cabin south of the Kempner property there.

And further saith not.

FEBRUARY 11TH, 1878.

In the Claim of WM. H. and MARIA GAINES, No. 784—Continued.

ROBERT B. RUNYON sworn and examined.

116 Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.
A. Robert B. Runyon: age, 26, and reside at Hot Springs.
Q. How long have you resided at Hot Springs?
A. I was raised here.
Q. Are you acquainted with Wm. H. Gaines and wife?
A. Yes, sir.
Q. State whether you know anything about the possession that Lawson Runyon had upon this quarter section, where it was, and who he was.

A. He was my father; he did have possession several years ago.
Q. Where was it?
A. It was in the lower end of the valley, at the foot of what is called Gwinn hill. There is a house on that particular spot now, and, as well as I can recollect, it is fenced up.
Q. North or south of the church?
A. North of the church.
Q. Who did he turn that possession over to?
A. Mr. Gaines.
Q. Who has had possession and control of it since that time?
A. Mr. Gaines, I think—Wm. H. Gaines.
Q. You have known it all the time?
A. Yes, sir; have never known any one else owning or control-ing it.

Q. State what street it comes up to.
117 A. It comes up to the main street, Valley street, and runs up on the hill to the section line.
Q. About how many feet upon the street was it?
A. I suppose it is 60 or 75 ft.
Q. State whether Mrs. Beldin had a claim.
A. She had a claim this side of that.
Q. State whether you know of Abraham Kempner ever having any claim.
A. Yes, sir; I know of his claim there; it is adjoining that same lot and fronted on Valley street.
Q. Any house upon it?
A. Yes, sir.
Q. How far up did it run?
A. Some 100 ft., I guess.
Q. State whether you know to whom Kempner turned it over.
A. I think Mr. Gaines has had possession of it. A. I don't recollect; it was a good many years ago.
Q. And since that time he has had continuous possession?
A. Yes, sir.
Q. Do you know anything about the claim of Mrs. Beldin?
A. Yes; she had a claim right this side, commencing at the well; it fronted on the Valley street and ran back to the section line.
118 Q. How many feet in front?
A. Probably 125 ft.
Q. Who has been in possession of that claim for the last ten years?
A. William H. Gaines.

By Com. COBURN:

Q. What improvements are on it?
A. When Mrs. Belding owned it there was a frame house on it of some four rooms; the front of it was weatherboarded; there was a well between that and Kempner.
Q. Do you know anything about Mrs. Julian having any possessions on that street?

A. I recollect about the house very well; it is somewhere just below what is known as the Valley house, where Capt. Toale's office is now; was a small log cabin on it 16 by 18 ft. square. Some time afterwards Mrs. Gaines built an addition to it—another room. This was after Mr. Gaines got possession of it. He made a double log cabin of it.

Q. State whether you knew anything about Patrick Burke having any possession.

A. That is before I recollect. I know where they were.

Q. State who has been in possession, as near as you can recollect, of the ground.

A. Mr. Gaines.

Q. Any house on it?

A. Yes, sir; a great many houses on it now.

119 Q. Any there before the war?

A. Yes, sir.

Q. Who had control of those houses?

A. Major Gaines. No one else set up any ownership to them, to my knowledge.

Q. State whether you know anything about the possession of James Sumpter at one time; and, if so, where it was.

A. It was situated about opposite the lower corner of the Hot Springs hotel; on the opposite side of the street—the houses.

Q. That extended up how far?

A. As far as Dr. Hobson's office; somewhere near there.

Q. Who was above it?

A. Mr. Kempner had a store above it, and also Mr. Beldin above there.

Q. What became of the improvements on it?

A. They were burned down during the war, and have never been rebuilt since. Some few houses have been put up on it, but most of it has been vacant since.

Q. Do you recollect anything about Major Gaines being put in possession of it?

A. Yes, sir.

Q. Do you recollect whether Kempner claimed his store or Major Gaines?

A. I think they belonged to Major Gaines and was rented to Kempner. He kept store there several years.

Q. Where was George Belding's storehouse?

120 A. About where the livery stable is now; or, rather, where the St. Louis saloon is.

Q. Do you know anything about the possession of Mills and Butler?

A. Yes, sir; I recollect that the Mills store was right where the Sentinel office is—Goode's drug store.

Q. Did Mrs. Butler have any house there?

A. Her house was the next house below the printing office.

Q. Do you know anything about Major Gaines having possession there?

A. Yes, sir; he had possession there since I can first recollect.

Q. State whether he has had control and acted as owner of it since that time.

A. Yes, sir; he has.

Q. Anybody else claim to own it or control it?

A. There may be somebody who claimed it, and probably may have controlled it some.

Q. State where the Barksdale possession was.

A. That was just above the printing office, about where Wilson's stables are.

Q. State whether you know where the Switzer property was.

A. Yes, sir; right where a man by the name of Allen is living now. The house is standing yet—the back part of it.

Q. Did he have an enclosure there?

121 A. Yes, sir. I suppose there was a right smart enclosure of some 20 ft. front; had a garden spot there; it run back to the creek.

Q. Do you know anything about Sam. and Oney Macklin having a claim?

A. Yes, sir; Oney was right where Bertsch's saloon is now. It fronted on Main street and ran back to the creek.

Q. State whether Switzer's claim did not join Oney's claim.

A. I think it did.

Q. And extended down below?

A. Down below the Allen house.

Q. State whether you know anything about this property being enclosed between the creek and the Malvern crossing and further down to the section line at any time and being used for any purpose.

A. It was enclosed and there was a brick yard upon it at one time. It has been enclosed ever since I can first recollect. My father cultivated a portion of it himself.

Q. Who was using it afterwards as a brick yard?

A. Mr. Lecroix, but he was working for Mr. Gaines.

Q. Do you recollect anything about the possession of Sabin?

A. No, sir.

Q. Do you recollect anything about the theatre building?

122 A. Yes, sir; it was just directly below the Hot Springs house and extended down to what is known as the Cohen house now and back to the creek.

Q. State whether there was any log house there.

A. There was some log houses below there—just below where the Cohen house is now.

Q. Can you describe anything about the mill on the other side of the creek?

A. I just recollect about it.

Q. Do you know anything about what improvements were on the east side of the creek between the Malvern road and — before the war and who had possession of them?

A. There was a log cabin there belonging to Mr. Gaines, and a colored woman lived in it, right at the crossing.

Q. Any other improvements below there on the same side that you recollect of?

A. Not that I recollect of.
Q. Was there not a house that Abe Peters lived in?
A. Yes, sir; below the creek—just below the corner.
Q. Was there any fence up?
A. That lot was all fenced up.
Q. State whether you know anything about the old Sabin field and fence and where it ran.
123 A. It started from the Malvern street —, where the cemetery stands now, and ran back to near the depot.
Q. And where did it go then?
A. Then from there up to the foot of the mountain.
Q. You say it ran east to near the depot?
A. Yes, sir; and then north, or rather northeast.
Q. And ran up to what place on the mountain?
A. Up to the line.
Q. And that was all enclosed?
A. Yes, sir.
Q. And from this east side of the fence it was fenced up to the residence of Major Gaines?
A. Yes, sir.
Q. And divided up into different lots?
A. Yes, sir.
Q. Who lived there at that time where Major Gaines' old residence is?
A. He lived there.
Q. How long has he lived there?
A. Ever since I can recollect.
Q. State whether he has been the ostensible owner and had control of those premises fenced up that you have described here on the street.
A. Yes, sir; he has.

Cross-examination.

By Mr. HARRELL:

Q. What is your father's name?
A. Lawson Runyon.
124 Q. How old are you?
A. Was 26 on the 6th of January.
Q. You have known Major Gaines all that time?
A. Yes, sir.
Q. You have been living here all that time?
A. Yes, sir.
Q. And Major Gaines was the one who had possession of these improvements you have described?
A. Yes, sir.
Q. Did you ever hear of the Beldin heirs?
A. Yes, sir.
Q. What improvements did they have?
A. The same improvements.
Q. Were they Major Gaines'?

A. They belonged to the heirs.

Q. How do you know?

A. That has always been my understanding. He has always had rental of them. That was what I was alluding to.

Q. What became of these improvements?

A. They were torn down and moved away for more substantial buildings.

Q. While he had control of them?

A. I think so.

Q. Who put up the buildings on them?

A. Different parties leased the ground. He also built some.

Q. Which ones did he build and which the other parties?

A. I don't know. I never paid much attention.

125 Q. Do you know who the Belding heirs were, how many, and their names?

A. George, Albert, Henry, and Maria Gaines.

Q. Where is Albert Beldin?

A. I don't know; Henry is in Texas; it has been three years since Albert was here; Henry was here about a year ago, probably longer.

Q. George Belding lives here?

A. Yes, sir; and Mrs. Gaines.

Q. Is George Belding's name in this claim of Major Gaines'?

A. No, sir.

Q. He has a separate claim?

A. Yes, sir.

Q. Are those heirs of age?

A. Yes, sir; all of them. Albert is over 40, and I think Henry is somewhere near 40; I do not know how old George Beldin is; he must be 38 or somewhere along there.

Q. Do you know Mrs. Maria Gaines?

A. Yes, sir.

By Mr. WALSH:

Q. Can you point out to-day any of those buildings that you have described?

A. I can point where they stood.

Q. Are any of them standing?

A. The Switzer house is; it is where the Allen house is now.

Q. Do you know of your own knowledge who constructed the house?

A. I do not.

126 Q. Can you tell me of any house that Major Gaines built, of your own knowledge?

A. He built that house where the confectionery is, this side of the Hot Springs house. I recollect about his getting lumber. He also built the Hot Springs hotel.

Q. Don't you know that Mr. Stitt furnished the lumber and built it?

A. I don't know about that.

Q. Can you point out one house that Major Gaines built or paid for building?

A. I don't know any that are standing now.

Q. You stated that he was in possession of that house and lived there all the time. Is it not a fact that he lived on his farm and that other parties have had possession of the house from time to time?

A. I don't think he has entirely left his house on the hill; ever since I can recollect he has been living up there.

By Mr. CURL, as attorney for Sumpter:

Q. Were you present when those premises were turned over to Major Gaines?

A. I don't know as I was present; I recollect of my father speaking about it.

Q. When was that?

A. Seventeen years ago. I don't recollect exactly; I was small.

Q. What was there in the shape of improvements when they were turned over?

A. Some log cabins.

Q. Where did they stand?

127 A. Right north of the Methodist church.

Q. Did Mr. Kempner have a garden running down to the foot of the hill towards the Gaines house?

A. No, sir.

Q. Do you know how Mr. Gaines got possession of the Gaines house?

A. No, sir.

By Mr. BENJAMIN:

Q. You knew he had possession?

A. Yes, sir.

By Mr. CURL:

Q. Do you know when he got possession?

A. No, sir.

JACOB W. PARKER sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Jacob W. Parker; age, 70, and reside at Hot Springs.

Q. State how long you have resided here.

A. I came here the 6th of March, 1853.

Q. Are you acquainted with William H. and Maria Gaines?

A. Yes, sir.

Q. State whether you was the Jacob W. Parker that a writ was served upon for the possession of a mill and where it was.

A. I forget the writ. I know where the mill was; I gave it up.

Q. Was not a writ of possession served?

A. I suppose so; I gave it up, anyway.

128 Q. Where was the mill?

A. It stood right above the Malvern crossing; the road then crossed differently.

Q. Where Shipley's store was?

A. About the north of Shipley's store; ran right through it, I think; had a post office there. I was postmaster in the house where my son's butcher shop is—right in the fork of the road. I delivered the mail from my north window.

Q. Whose house was that?

A. I first rented it from Wm. Gardner, then Wm. H. Gaines.

Q. Gaines came in possession of it while you were there?

A. Yes, sir.

Q. About the time of the mill?

A. I don't know about that; perhaps about that time.

Q. Look at that and see if it is your lease (handing witness paper).

A. Yes, sir.

Q. What improvements were there in the forks of the road at that time?

A. There was a frame building.

Lease offered in evidence from Wm. H. Gaines to Parker, dated 8th December, 1857, and marked Exhibit No. 1.

Q. Do you know Peter Burke?

A. Yes, sir.

Q. Did he have any possessions here after you came, in 1853?

129 A. I leased from Peter Burke and Wm. Gardner, jointly. I think there was four rooms; I suppose 16 or 18 feet front. There was a yard they had fenced below that; it run down 50 or 60 ft., right south of these rooms.

By Com. Coburn:

Q. Anywhere near the Malvern crossing?

A. It is on the west side I am speaking of; it will go below the Malvern crossing now.

Q. What year?

A. Must have been in 1854 or 1855.

Q. That he was in possession?

A. I mean Burke and Gardner.

Q. When were they dispossessed?

A. It must have been in 1854 or 1855. I paid Gardner rent for a year and a half.

Q. Here is a certified copy of the writ dispossessing you.

A. Yes, sir. What is the date?

Q. It was issued on the 3rd of March, 1856.

A. I leased from Major Gaines; the date of the lease will show.

Q. This shows the date upon which this writ was served for these mills. I was trying to fix the date in your mind when Burke was put out, and whether it was about the same time.

A. I was appointed postmaster under Burke. I was his deputy

in the spring of 1854, and he went to Texas right off, and in
130 a short time I was appointed postmaster. It was about the same time, I reckon.

Q. About the same time you were put out?

A. Yes, sir.

Q. State whether you have known these premises since.

A. Certainly.

Q. Who has been in possession of them since?

A. Major Gaines.

Q. State whether Sabin had any possession on this street or not.

A. Not that I ever knew of.

Q. Do you know what became of the Burke property?

A. It was burnt up.

Q. When?

A. In 1864, I reckon; during the war; and a portion was rebuilt again, I think.

Q. You don't recollect anything about Abigail Sabin having any possessions upon this street?

A. No, sir.

Q. Do you know whether Major Gaines built any houses after he got possession of this property before the war; and, if so, where?

A. Yes, sir; built four rooms, about 16 by 18 ft., with a shed-room back; extended from what we called then the Sumpter property, and ran south; log houses.

131 By the CHAIRMAN:

Q. That was on the other side of the street?

A. West of Valley street.

Q. The Burke property that you were speaking of before is on the east side?

A. All on the west side; it was Gardner and Burke's, but they turned it over to Major Gaines afterwards.

Q. Do you know whether Major gaines had, any time before the war, this property on the west side fenced up?

A. There was a fence on the west side on the hill, but who put it up, Major Gaines or Sumpter, I do not know.

Q. State whether you know anything about Major Gaines having the east side of the street enclosed as far down as Belding's.

A. It was enclosed, but who had it done I do not know. A man by the name of Switzer had a garden and a house, and I think he joined onto old Olney on the north.

Q. Then below that?

A. Nothing else until you come to a brick yard.

Q. Was it enclosed?

A. I think it was.

Q. Who had the brick yard?

A. Lecroix worked it. I always called it George Belding's when I came down. I never knew anybody else but he and Gaines.

Q. How long have you known this property?

A. Ever since 1853.

132 Q. State whether Major Gaines had been in possession and control of this property and leased it as the ostensible owner since he has been put in possession of it.

A. There was trouble about a portion of it—this Burke and Gardner part. Major Gaines has been in possession as far as I know; he has been the ostensible owner.

Q. And you know of no one controlling it but Major Gaines?

A. No, sir.

Q. Those persons building on it built how?

A. They built upon a lease.

Q. From Major Gaines?

A. Yes, sir; but they repeatedly said he had no right and said they were not going to pay anything.

Q. But they went on there, so far as you know, under a contract or lease?

A. That is my understanding.

By Mr. WALSH:

Q. Did you ever hear of the Government owning any property down there?

A. I have heard that for four years, almost.

Q. How many houses on the reservation constructed by Major Gaines were standing on the 24th of April, 1876, that you know of?

A. I don't know of any except where he lived. He did build, but they were burnt down.

By Mr. HARROLL:

133 Q. Do you know a man by the name of Boatright who had possession of the forks there?

A. Not in the valley; never knew him.

Q. Don't you know that Boatright has been holding possession in this fork adversely to Gaines?

A. I do not know him.

Q. Do you know J. H. Nichols?

A. I know the old sheriff.

Q. What was he before he was elected sheriff?

A. He was a blacksmith right on the place I have described.

Q. Who built that shop?

A. I think Nichols did; he claimed it; was in possession of it.

Q. When did he build it?

A. Three years ago.

Q. You were asked if the property on the west side of the creek was enclosed, and I understood you to say that you did not know whether it was or not.

A. There was a fence built by somebody. I don't know whether Mr. Sumpter claimed it as his fence or Major Gaines, or whether it was a general fence; but there was a worm fence there made of rails.

Q. And you say it enclosed some log cabins of four rooms of some 18 ft. front each; in what year?

A. They were put up in 1866.

Q. And below them what was the distance before you came
134 to vacant ground, upon which there was no house?

A. There was a space of 20 or 30 ft.; but after that Maj. Gaines put up a house adjoining the one south.

Q. From the lower side of the new house about how far was it to the next improvement?

A. It was an old house; the new house was north of the old one. Below this lot, which I leased from Gardner and Burke, Major Gaines put up on the west side three or four houses, one right after another, of the same style, below Little & Jenkins' store. If you start at Little and Jenkins' there was a post office, then two-story rooms, a ware-room, and a saloon, all covered over with the same roof.

Q. They were log cabins?

A. A frame building.

Q. In what year?

A. When I went there, in 1853.

Q. Who owned them then?

A. Burke and Gardner.

Q. How far from those houses to the next house?

A. 20 or 30 ft., and then Major Gaines put up one adjoining the house still below and left a space between the two.

By the CHAIRMAN:

Q. Whose house was that?

135 A. It was known as the Julian, but, as I understand, it was Belding's or Major Gaines'.

Q. What was the frontage of that house?

A. 16 or 18 ft.

Q. How far below that before you came to another house?

A. I cannot tell, but old Mrs. Belding lived there when I came, and lived there for years afterwards.

Q. And who owned that?

A. She, of course, owned it. She lived there, and she is the mother of the Beldin heirs.

Q. How far below her house to another house?

A. It is right where the house now stands—the adjoining house.

Q. What house is that?

A. We always called it the Kempner house.

Q. Who has the store in it?

A. Nobody; a private family is living there; just this side of the Methodist church; the first house; the house with the gallery on it.

Q. The house that you speak of as being there now——

A. That stands as it was; it stood through all the trouble.

Q. When was it built?

A. Before 1853.

Q. Is that the Kempner house?

A. Yes, sir.

136 By Mr. CURL:

Q. I understood you to say that the Burke and Gardner buildings—the upper ones of them—stood where Little and Jenkins' store is?

A. That is my judgment.

Q. Do you recollect whether Mr. Sumpter had a stable in his lot that he had fenced?

A. I think he had a stable in the south end of his lot. There was a big gate that led up to his stable.

ALFRED WHITTINGTON sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Alfred Whittington; age, 34, and reside at Hot Springs.

Q. How long have you resided there?

A. Since 1851.

Q. Are you acquainted with Major Gaines?

A. Yes, sir.

Q. And Mrs. Gaines?

A. Yes, sir.

Q. Describe the improvements that were formerly known as Flowers and Barksdale.

A. They were right on the west side of Valley street, as near as I can remember, just south of the Earl house, and ran down 100 ft.—maybe more.

Q. Who had improvements immediately south of that?

A. South of that came Mills' store.

137 Q. What improvements did he have?

A. He had a storehouse on the street, and back in the yard was his residence. I think it belonged, or did afterwards, to Mrs. Butler; I don't recollect what her full name was. The house was occupied soon after the war by the old Burgamer store. It is right along where the printing office is; it takes in about that property.

Q. Do you recollect any house below Mills' claim owned by Major Gaines?

A. George Belding had a store in the next house south of Mills; it was right adjoining the Butler yard.

By Com. COBURN:

Q. This is all on the west side?

A. Yes, sir; and then right south of Beldin's storehouse I think Kempner had a store—about where the livery stable is now.

Q. Below that who occupied the ground?

A. Sumpter's ran on down below Hobson's office; the old well used to stand right in front of it.

Q. The old well is in the street now?

A. Yes, sir; it was then in the neighborhood of Hobson's office.

Q. And how far did it run down?

A. The old well was filled up. The lot extended some hundred feet further down, running towards the hill.

Q. Who was below Sumpter?

A. Just below that, on the same side of the street, was a
138 row of one-story buildings; old man Gardner and Burke had a store there; and then some distance below that house came Mrs. Julian; then the next house I remember is the Kempner house; a portion of it stands there yet.

Q. Do you recollect the Runyon house?

A. No, sir.

Q. Do you know whether Abigail Sabin had any possession above there, on the east side, at the forks of the road?

A. There was a house nearly opposite Kempner, where Switzer used to have a grocery. I never knew anything about Sabin's shop there. I never knew him at all.

Q. Where did the road cross in the forks?

A. It must have run right in where Breitie's saloon is, some 80 feet this side of the Malvern crossing. It ran through Breitie's saloon, taking in a portion of Shipley's store.

Q. State whether there was any improvements in the forks of the road.

A. There was a log house that stood there, with two rooms and a hall between and a gallery on one side. On the north side of the Malvern crossing was an old mill. The first man I recollect in that house in the forks of the road was old man Parker. Several other parties lived there afterwards; a man by the name of Davis lived there once.

Q. Do you know anything about the possession of old Oney?

139 A. Yes, sir; she had a house just below to the left, on the same side of the street. She had a little garden.

Q. Can you give the present location?

A. I should judge it to be right where Bertsch's store is; a little below, perhaps, but right in that neighborhood.

Q. Who occupied below?

A. A man by the name of Switzer had a house in there a little piece below.

Q. Do you know what became of that house?

A. No, sir.

Q. Do you know anything about a brick yard being enclosed below there?

A. Below there a house stood as long ago as 1853, which was burned; then afterwards there was a brick yard in that same enclosure.

Q. The ground was occupied and in use?

A. Yes, sir.

Q. Do you know who by?

A. I do not.

Q. Do you know anything about Major Gaines coming in possession of this property and remaining in possession?

A. Only from hearsay.

Q. Do you know of his being in possession and being the ostensible owner and control-er of it?

A. I do not know as I do, only portions of it. There are some portions that Maj. Gaines had possession of that I know.

140 Q. Do you know anything about Major Gaines having built the Hot Springs hotel?

A. To say that I know it, I do not; it is generally believed that he built it.

Q. Do you know anything about the old Sabin field?

A. Yes, sir.

Q. Can you give a description of it as to where it went?

A. It commenced at the southwest corner of the cemetery or Malvern road and ran down to about opposite or probably a little below the old city hotel, and then run back towards the depot; it then run along what is known as the Benton road, as near as I can place it, until it got up to just in back of where Carhart has a residence.

Q. State whether the ground running up towards the mountain was not fenced up.

A. Yes, sir.

Q. Who was it fenced up by?

A. Major Gaines.

Q. Who has possession of this field—the control of it?

A. After Major Gaines got possession of the old residence there I think he had from that time.

Q. When was that?

A. Some time about 1852 or 1853. I know that Mrs. Sabin lived there a long while.

Q. And Gaines has been living there ever since?

141 A. Pretty much all the time since.

Q. So far as you know he has the control of that field and all those houses?

A. Yes, sir; up to the time they were thrown out into the woods by the fences being thrown down.

Q. When were the- thrown down?

A. When the Gaines avenue was put through.

Q. Up to the time of the decree or since?

A. I don't remember whether it was just before or after. It has been the general understanding that they belonged to Major Gaines.

By Mr. HARROLL:

Q. Describe where the fence ran.

A. I could not say anything about the back fence over the hill. I never was up there; a garden was there.

Q. How far did the garden extend back?

A. It was not on Valley street; I am speaking of the Benton road. His garden fronted on the Benton road.

Q. Back of his house?

A. Yes, sir; the garden ran back from the Benton road to his house.

Q. How far from his house eastward did the garden extend?

A. I don't know as I could tell; I should judge the garden extended from the house in a southerly direction.

Q. Do you know where the line of the Hot Springs reservation is?

A. No, sir.

142 Q. Do you know whether he had any improvements in the rear of his house?

A. His stable lot ran back.

Q. How far back?

A. It ran back to opposite a little house where Irish Jimmie use to live. The road ran between Jimmie's and Major Gaines'.

Q. And took a turn toward the mountain?

A. Yes, sir.

Q. And then turned towards the depot?

A. Yes, sir.

Q. State where John Sammons' blacksmith shop was in the fork of the road.

A. John Sammons has had two or three shops.

Q. The one he sold to Nichols?

A. I don't know as he sold any to Nichols.

Q. And one he sold to Boatright?

A. I don't know as he sold any to Boatright.

Q. Where did you say Mrs. Belding lives—the old lady?

A. She lived on the hill where George Belding now lives.

Q. Lived there during the war or at the end of the war?

A. No, sir; I think she was dead before the war.

Q. Where did she live when you last knew her?

A. My impression is that she lived with Geo. Belding on the hill,

By Mr. WALSH:

Q. How many houses were on the reservation before the fire of May or June, 1864, that were built by Major Gaines, to your

143 knowledge?

A. I don't know that Major Gaines ever built a house in his life.

Q. Or knew that he had them built for his own use and benefit?

A. The one where he lives.

Q. What is it known as?

A. The Gaines cottage.

Q. Will you swear he built it?

A. He was living there.

Q. Point out one other building on the reservation before the fire that he constructed except those little cabins known as the Gaines cabins on the road as you go down.

A. I don't know that Major Gaines built any. I don't know whether those cabins are there now or not.

Q. Is it not a fact that nearly all the buildings spoken of were built by other parties?

A. No, sir; I could not say that.

Q. I will ask you how many buildings were on the reservation on the 24th of April, 1876, that were constructed for his own use and benefit.

A. I think the Hot Springs hotel.

Q. Is it not a matter of fact that Stitt furnished the material for hat hotel?

A. My understanding is that Major Gaines built the house and rented it.

Q. Do you know of any other?

A. No, sir.

By Mr. BENJAMIN:

144 Q. Do you know who put up all those buildings down there?

A. No, sir.

Q. Do you know that Major Gaines was acting as agent of the Belding heirs, and did you not hear Gaines say that he was agent of the Belding heirs?

A. I never heard him say so.

JACOB W. PARKER recalled:

I desire to state that the log cabins spoken of in my testimony were built before the war—in 1858 or 1859.

ABRAHAM PETERS sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Abraham Peters; age, 45, and reside at Hot Springs.

Q. How long have you lived here?

A. 26 years.

Q. Are you acquainted with Major and Mrs. Gaines?

A. Yes, sir.

Q. State where you resided here before the war.

A. I lived with Mrs. Sabin out there at the grave-yard four years.

Q. Whereabouts is that?

A. Near 300 yards below the grave-yard. There is a two-story building there now; a kind of a yellow house; the City hotel.

145 Q. State whether you know anything about this Sabin field spoken of here and where the fence ran.

A. Yes, sir; Major Gaines had a garden there.

Q. Where was the garden?

A. On the right-hand side of the road. I think it ran down about 250 yards, one the same side of the grave-yard.

Q. Who fenced on the other side of the Benton road towards the mountain?

A. Major Gaines did.

Q. You have heard him testify in regard to these old improvements and where they were situated. Is that testimony substantially correct according to your recollection?

A. About the log buildings?

Q. Yes, sir.

A. Yes, sir.

Q. On Valley street?

A. On the right-hand side.

Q. Who had control of those buildings?

A. Major Gaines.

Q. Do you know how long he has had control of this property?
A. He built them before the war.
Q. And has had control ever since the war?
A. Yes, sir. He has been renting them out or occupying them since.
Q. All this ground from Barksdale down?
A. Mr. Sumpter came in there.
Q. Below how is it?
A. Suppose all below was under his control, as well as I can recollect—all below Sumpter.
146 Q. And no one else?
A. No, sir.
Q. How about the east side of the street?
A. At that time there was a vacant space there; I don't believe there was any building on it next to the corner road where you go across the street.
Q. How about below?
A. Below this was the Sammons blacksmith shop; next was Oney, and next was Mrs. Switzer. Sammons' shop was under the control of Major Gaines. I don't know whether he had anything to do with the Oney building. The brick yard below the Switzer building extended to the street.
Q. Has Major Gaines re-ided here with his family?
A. He has been here ever since I have—26 years. I used to drive his family around.
Q. His family would be here all the time?
A. Yes, sir.

By Mr. HARRALL:

Q. How do you know that Major Gaines controlled these various houses?
A. From what others said.
Q. Do you know whether Mr. Gaines sued Mr. Nichols, the blacksmith?
A. That is my recollection.

By Mr. WALSH:

Q. How many buildings do you know, of your own knowledge, that Major Gaines constructed before the fire of 1864?
147 A. Those three log buildings on the right-hand side going down.
Q. What were they known as?
A. Gaines' cabins.
Q. Do you know of any others?
A. No, sir.
Q. Is it not a fact that the Gaines residence was originally constructed by Mrs. Sabin's mother, and that he made some improvements afterwards?
A. Some portions of that house—the old building—were very common looking, and when he went there the buildings were hardly worth looking at. He fixed them up.

Q. Do you know of any building here on the 24th of April, 1876 that he constructed for his own use and benefit?

A. None except the one he lived in.

By Mr. CURL:

Q. Do you know where Mr. Smith's restaurant is, on the right-hand side of the street?

A. Yes, sir.

Q. How far above that building was Mr. Sumpter's stable?

A. On the ground where Mr. Little's store stood?

Q. How far from the street was the stable?

A. I suppose 30 yards back. At that time they hadn't fenced up in front down to the stable. I think Mr. Sumpter had, on a portion of that ground, a good fence.

HENRY ROBINSON sworn and examined.

148 Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Henry Robinson; age, 41, and reside at Hot Springs.

Q. How long have you resided at Hot Springs?

A. The best portion of my life.

Q. You have heard the testimony here in regard to the old improvements, the Sabin field, and the old fences. State whether they are correct.

A. Yes, sir.

Q. Do you know where the old mill spoken of is?

A. Yes, sir. It is filled up now. It is a little below the Hot Springs house.

Q. Do you know anything about the theatre building?

A. Major Turnbull built it.

Q. Do you know whether Major Gaines became the owner of it or not?

A. Only by hearsay. I understood that he changed it into a hotel and afterwards tore it down, and probably put some of the old lumber into the Hot Springs house.

Q. Where was it situated?

A. Just below the bridge leading to the house known as the Gaines cottage.

Q. Run down to about where?

A. Close to the Cohen house. It is above the corner of the blacksmith shop—between that lot and the creek.

Q. Do you know who has been the ostensible owner and controller of this property?

149 A. Only by hearsay. The log cabins, I suppose, Major Gaines built, because he had his hands at work on them before the war. Some of them have been torn down since the war.

By Mr. HARROLL:

Q. Do you know that Major Gaines owned any of this property described?

A. Only by hearsay.

Q. You say those log cabins have been taken down by his permission?

A. Some have been taken down since the war.

By Mr. WALSH:

Q. State of your own knowledge — any buildings erected by Major Gaines before the fire.

A. I know of those double log cabins.

Q. How many buildings were here on the 24th of April, 1876, that were erected by Major Gaines for his own use and benefit?

A. That house he lived in.

Q. Who built that?

A. He repaired it.

Q. Was it not built by Mrs. Sabin?

A. A portion of it.

Q. Do you know as to whether it is a fact that Major Gaines brought an action of ejectment against all his tenants, and then bought them out or compromised with them?

A. I don't know how he got possession.

In the Matter of the Claim of WILLIAM H. GAINES and MARIA GAINES, No. 784, Consolidated with Many Others.

150 TUESDAY, *February 12th*, 1878.

*Forenoon Session.*

ALBERT BELDING, being first duly sworn, testified as follows:

Questioned by M. W. BENJAMIN, in behalf of Gaines' claim:

1st Q. Look at the signature attached to this receipt and state whether you know it to be the signature of Mr. Hempstead, and whether he was acting as receiver in the land office at Washington at that time.

A. This paper I have not seen for 25 years. In December, 1851, I went to Washington, and went to the land office there and paid the receiver, B. F. Hempstead, $200 in silver for a quarter section of land embracing the Hot Springs, and he gave me a receipt for it. This is that receipt, to the best of my knowledge.

2nd Q. To whom did you deliver it?

A. To William H. Gaines.

3rd Q. Have you any claim on any of this land?

A. I am one of the heirs of Ludovicus Belding. Major Gaines represented me, with the other heirs. He named my sister.

4th Q. State whether Mrs. Gaines has been the only one of the Belding heirs that has resided continuously on this land.

A. I think so. I have no claim to this quarter section except through Gaines and wife, as the representative of the Belding heirs.

151 (NOTE.)—The above testimony is offered by the —, but the commissioners reserve all questions as to its admissibility.

JOHN H. LACROY sworn and examined.

Questioned by Mr. BENJAMIN, representing Gaines claimants:

1st Q. State your name, age, and residence.

A. John H. Lacroy; age, 40; residence, Cove Creek station, Hot Springs county.

2nd Q. Did you ever reside here?

A. Yes; I came here in 1858.

3rd Q. State whether you are acquainted with the premises then claimed by Wm. H. Gaines; and, if so, state the circumstances connected with your acquaintance with it.

A. On the west side of Valley street there was a little log house that I rented from Mr. Gaines myself and lived in it about 3 months. Right north of that he had a double log house that I rented and lived in for a year. Squire Towle is living right in front of where the little log cabin stood, and Johnson and Foreman are about where the next one was. There was another double log cabin further this way. I think Mr. Hilfridge's house is right over it. There were four log cabins. The court-house is over one of them. I built the chimneys for those houses. North of that there was a house built by Mr. Burke. I built the chimneys for Major Gaines. All
152 north of there were renters, so far as I know.

4th Q. How far north were they paying him rent?

A. As far north as Williamson's livery stable. I heard the men that lived in those houses say they were paying him rent.

5th Q. What improvements were there on the east side of the street at that time?

A. Beginning at the south, right this side of George Belding's there was a fence and some land that had been cleared up. I made brick for Major Gaines there in 1859. There was an acre on that side or over. Right north of that there was a little frame house that Mr. Second or Legarde lived in. They told me they were paying rent to Major Gaines. It was commonly known as the Sweipzer house. The next north of that was a hotel that Bill Davis had at that time. That is standing there right under Shipley's storehouse; Major Gaines controlled that. Then 40 or 50 feet further north there was a double log house, put up at the same fall. I put the chimneys to it. Right north of that there was a theatre building, said to have been put up by Mr. Trumbull; Major Gaines controlled that, and I worked on the building for Major Gaines. I partitioned it into rooms for a hotel. That theatre stood about where Mr. Kimbell's store is. It was a very long house and a very large house,
153 from 50 to 70 feet long, with the length up and down the street. Up towards the Hot Springs hotel, on the east side of Hot Springs creek, commencing from the yard fence, he had a residence and yard fenced in, the same that is there now. There was a field cleared southeast of his, of ten of fifteen acres, that was enclosed and that was said to be his. That included the country south of the Gaines residence to a point about 40 steps below the grave-yard. The south line run towards the depot two or 300 yards. The fence run right along the road, going to Benton on the south. I think

Gerhart and Williamson are in that field now. There was no building inside of the field. A portion of that field was in cultivation. It had a good fence around it. East of the creek and west of the Malvern road there was a stable and a little cabin that Ed. Peters kept some horses in before the war. There was a garden down next to the Sabin lot that I got my clay from to make these bricks. That was a little southwest of the grave-yard. These enclosures, generally speaking, have been kept up by Major Gaines. He has gen- kept possession of them.

Cross-examined by Mr. CURL:

6th Q. In 1858, the time of which you speak, who occupied
154 the property between where the present St. Louis saloon is and where Sutton's store burnt out a short time ago on the west side of the street?

A. Mr. Sumpter—John T. Sumpter's father.

7th Q. Do you know whether Mr. Sumpter paid any rent to Major Gaines?

A. It was my understanding that he did, but I do not know personally.

8th Q. Do you recollect what improvements Mr. James Sumpter had along there?

A. He had a little hotel there and a stable and lot further down towards the Suttons. I believe he had a garden right back of the house and a little further below.

9th Q. How long was that hotel?

A. It would accommodate 15 or 20 boarders. It was one story. There was a little house standing back of the hotel, due west, for the servants.

10th Q. Do you know what building now occupies the place that Mr. Kempners occupied?

A. The El Paso sale stables does.

Re-examination.

Questions by Mr. BENJAMIN:

11th Q. The- Mr. Sumpter did not occupy that?

A. No, sir; it was below that he occupied.

Q. 12. Do you know whom Mr. Sumpter recognized as his landlord?

A. Major Gaines.

13th Q. Do you know who Mr. Kempner recognized?

—. ——.

155 WILLIAM CURL sworn and examined.

Questions by Mr. BENJAMIN, in behalf of Gaines' claim:

1st Q. State your name, age, and residence.

A. William Curl; age, 31; residence, Hot Springs.

2nd Q. Are you acquainted with Major Gaines and wife?

A. Yes, sir.

3d Q. Do you know the property they claim?

A. Some of it.

4th Q. How long have you known it?

A. I have been employed by Major Gaines in building. I was employed by him to build some rooms immediately north of and in connection with the Gaines residence. I have had some acquaintance with it for 12 years. I am a carpenter and builder. Mr. Gaines honored the orders that I gave for money for the erection of the buildings. I was in the employ of Major Gaines in erecting two storehouses, situated south of the Garland house, which he furnished the lumber, nails, and windows for. He furnished all the lumber and paid for the work. One of the cottage houses near the Malvern road—near the southwest corner of the cemetery, the west side of the Malvern road—I helped to build. Those cottages houses have four rooms each. I built them for him on what was known
156 as the lower Benton road, with four rooms in each. He furnished the materials and paid for the work. I was employed by him as foreman, and he paid the wages of the hands on my orders. I was in the employ of the contractors in the erection of the Hot Springs hotel; Major Gaines was the employer, and paid the orders given by the contractors, to my certain knowledge. I was in his employ to the erection of a little office immediately north of the Hot Springs hotel that was built for the use of and occupied by one Dr. Spence, and I know that the rooms were built by Wm. H. Gaines or under his consent and authority; that is north of the hotel. There was one right near Malvern crossing—I think probably the second building below Malvern crossing on the east side of the street—occupied by William States now as a saloon; that is on the west side of the creek and on the east side of the street. My boss, from whom I learned my trade, was employed to build that building. It was built by Major Gaines. He furnished the materials and paid the hands. It was built for a laundry house and was so used for awhile. There was another building put up down there that is known as the Texas house, that was known originally as Caver's store. I was foreman of the erection of that building,
157 and Major Gaines paid the hands. It was built for Mr. States, but the hands looked to Major Gaines for their pay and got it. It is a two-story house now; it was originally a one-story house. I think it is the first building south of Kimbell's store; it cannot be more than the second building south of there.

Here was introduced in evidence:

FEBRUARY 26TH, 1878.

Major Benjamin offers in evidence the proof of the pre-emption and application of Lydia Belding, widow of Ludovicus Belding, certified to by the clerk of the Court of Claims as being taken from the original papers placed in the office by the Secretary of the Interior, marked X Exhibit; also certificate of the receiver and register of the land office, Camden, Ark., of the application of Lydia Belding, marked Exhibit Y; also certificate from the General Land Office

that B. F. Hempstead and W. H. Ellis were land officers at Washington, Ark., in 1851 and 1852, marked Exhibit Z.

Conveyance from George Belding to William H. and Maria Gaines, dated October 20th, 1877; also deed of Henry Belding to William H. and Maria Gaines, dated on the 9th day of November, 1877; also tax receipt for taxes of 1874 on this property, in favor of the estate of Ludovicus Belding; also statement signed by
158 the clerk of Hot Springs county, showing by whom the taxes had been previously paid; all of which papers are herewith.

GEORGE BELDING sworn and examined.

Questions by Mr. BENJAMIN, representing Gaines' claim:

1st Q. State your name, age, and residence.

A. George Belding; 45 years; Hot Springs.

2 Q. How long have you lived here?

A. Since the spring of 1852, except three years during the war.

3 Q. State if you know anything about the possession of the Belding heirs, or of Major Gaines for them, and how they came into possession.

A. We came into possession of the most of it by the action of the courts, writs of possession, &c. The part that came from Mrs. Sabin was bought from her by the Major; that house occupied the ground where the St. Louis saloon is now; that house he bought of Mrs. Sabin at the same time he bought the property where his residence is, &c.

4 Q. Commence now at the south end of the tract and state what improvements were there in 1860, and who controlled them.

A. Before 1860 there had been some old cabins that may
159 have been destroyed before that time. Above the line there was a little house owned by Runyon. There was a man lived in it by the name of Weaver, in 1859 or 1860. That was just south of the Kempner house, between there and the south line of the Hot Springs quarter. He was a tenant of Runyon's, who owned the house then. The next house to that was the Kempner house, which stands there now, and is occupied by a man by the name of Oxford. Next to that was a house that presented one corner a little more to the road than the other, which was purchased by my mother from a man by the name of Williamson. That old house partly fell down, and was torn away. That was this side of the Kempner house and almost joining it. It would be about McCaffrey's, or probably a little below that. The next house was a little old log cabin that old Mrs. Julian lived in, and that was known as the Julian cabin. I knew that house as long ago as 1855 or 1856. Major Gaines got possession of that Julian cabin and built another cabin to it about the time he built the other row of cabins. He built another cabin to it, leaving a little space between, and put a chimney right in there between the two houses. About 25 feet still further north of that he built two more cabins, with a chim-
160 ney between them. He had a row of four double cabins there with shed rooms attached, and there were four rooms, I think,

to all of them. That row of cabins would extend probably 250 feet, about, above where Horton's now stands. Next above those cabins were the Burke possessions. A man by the name of George Asher sold goods there at one time, a Jew. There was quite a row of houses there. I think four or five rooms. It was quite a long row of cabins. There was a man by the name of William Hutt sold goods there afterwards. Burke and Gardner bought Hutt out*right*, and sold goods there for a couple of years or so, and then old man Gardner's son blowed the thing up with powder and matches. That was the last that I ever knew of that house. From the big, hollow, old red oak tree that stood about the corner here (reference to plat) there was an open place that Sumpters afterwards fenced up. There was an old well that used to be there which is now in the street and filled *it*. It stood directly in front of Sumpter's grocery. They had a large room that did not come out flush with the street; probably 20 feet square. The fence ran diagonally back to Sumpter's house lot. Then Sumpter's building came up north. They had
161 a long row of buildings. Their dining-rooms was a long room this side of the grocery house. I do not know how many rooms they had there, but probably about five rooms. They extended up to where Kempner sold goods. They had a garden enclosed back of that. It was of the length of that row of buildings and extended probably further. Mr. Kempner had a long store-room and probably two other rooms south of that that he used as a warehouse, that joined onto the Sumpter building. Then above that—north of that—was the storehouse that I occupied. That was about 24 feet long, and presented the side to the street, as all the houses did at that time. The St. Louis saloon now occupies the same grounds. The livery stable stands right on the ground where Kempner was, or at least a portion of it. I am not sure but the old house would run a little south of that. Still north of my storehouse there was a yard with a little dwelling-house standing back from the road that Mrs. Butler used as a residence and afterwards sold to Mills. Right north of that on the street was a little storehouse that presented the end to the road, that Mills occupied. Right north of that again was a little row of one-story buildings occupied by Barksdale and at one time
162 by Flowers. Right in front of the Wilson livery stables (the street was very narrow till after the war) was a little house that was used as a bar-room by Barksdale and other parties. Before Barksdale had it it was used by a man by the name of Benson. It was part of the Barksdale possessions. These are all the buildings that I know of on that side of the street. On the other side of the street, about where the Hot Springs hotel is, an old Dutchman named Sweiptzer had a grocery house. Below Sweiptzer's there was a little cabin that was used sometimes by a man by the name of Dugan, on the corner very nearly where Dr. Taylor's office is now. The theatre building was a little below the bake shop. It was built by Trunball, who failed in the business and sold the house to me and Major Gaines. It cost about $1,700. Below that were 2 or 3 log cabins that Major Gaines built, and below that was a blacksmith

shop, and below that some old houses that I have known ever since I have been at Hot Springs. They were occupied by a man by the name of Hooper. They were just above the Malvern crossing. I speak of the crossing as it was then, probably a little this side of Brighty's saloon, right above the crossing of the creek. Right diagonally across the Malvern road was an old frame house that presented the end up north. There was a little gallery next Valley
163 street, and there was another room and a little hall between. That was occupied by old man Parker some time, and the post office was in it. There was a fence around it. The well was right in front of old Ony Macklin's door, who kept and sold cakes there. She had a little yard fence- in. Below that was Mr. Sweiptzer's residence. He lived there and sold whiskey in the shop I described before. That was enclosed. Before the war there was an enclosure where Lecroy made bricks for Major Gaines. Below that there was an old shanty that McDaniel lived in and that burnt up. After that it was enclosed and a brick-kiln was put up there. Since that Major Gaines fenced that in with a good fence. I had a fence 7 or 8 feet high around my garden. My possessions extended over onto the Hot Springs quarter, and his enclosure joined onto mine. I think it was enclosed all around since the war. I do not recollect whether it was before the war or not.

5 Q. State whether before the war the ground on the west side of the creek was all enclosed.

A. I cannot recollect. There was a fence on the back side of this line of improvements built by the Sumpters, but I do not recollect about any front fence below the Burke possessions. Above
164 there was no fence, because there were buildings there, except Mr. Sumpter had built a fence from the Burke house to his. At one time they had a rail fence that ran down below this big room that I told you about, where there was a crazy man stayed, and he broke loose one day and ran with a chain fast to him and hid in one of the fence corners there, and that made me remember that the fence stood back from the road. I think after that Mr. Sumpter straightened out that fence even with the road. Their stable and horse lot sat back very nearly where the Sumpter house is now, and there was a passage-way left there to get up into the Masonic lodge-room that was up on the hill there, not far from Mr. Little's. The Sabin field there, I do not know just how it was shaped. It was quite a large field at the time Major Gaines got it. There was more than one-half of it that he cut off for her. He ran his fence right on the south line of the Hot Springs quarter from the Malvern road to the back side of her field, wherever that was, and then it extended up to the Benton road. There were two Benton roads used then, but mostly it was *but mostly* the right-hand one going from here
165 towards Benton that ran right up to the hill there. Major Gaines' fence ran right up to that. There was another road that ran where the Benton road now does. I lived there with Major Gaines, and I know that afterwards he extended that fence across that road and turned the entire travel around that crooked corner that was up there.

6 Q. State whether Major Gaines is the only one of the Belding heirs that has resided on this property continuously.

A. Yes.

7 Q. And whether with Major Gaines she has not exercised control of it.

A. With the exception of the little strip that I had down there. They are the only ones that have lived on this quarter except myself. I was the first person who took possession for him of these houses when he bought them from Mr. Sabin.

8 Q. Who has had the control and management of it?

A. Major Gaines, all the while.

9 Q. Do you know whether Mr. Sumpter leased to Major Gaines and paid him rent?

A. I do not, but I have heard that he did. I know Kempner leased a storehouse from Major Gaines and paid him $12.50 a month rent. I never saw the lease.

Cross-examined by JOHN M. HARRELL:

10th Q. Are you one of the Belding heirs?

166 A. Yes.

11 Q. Have you any interest in the prosecution of this claim by Major Gaines?

A. Not that I am aware of. I made him a deed on the 20th October, 1877.

12 Q. What was the consideration?

A. I do not know what it would amount to. I am indebted to Major Gaines or have been, and I do not know how liberal he would be if he gets this thing through.

13 Q. Will you measure his future *liability* by the past?

A. Sometimes he has been pretty liberal, and sometimes he got a little stubborn and was just the reverse.

14 Q. Do you say he has been in possession of all this property 25 years?

A. No, sir; I said the balance, except the Sabin property, he got through the courts, and I do not recollect just when the actions took place. I suppose it was about 1856, probably.

15 Q. Have you, as one of the Belding heirs, shared the income derived from the rents and profits of that property?

A. No, sir. The Major was at all the expense of conducting the suit, and he had a right to the rents.

16 Q. He never accounted to the heirs?

A. He never did to me.

17 Q. Who are the other Belding heirs?

A. His wife, Albert, and Henry M.

167 18 Q. How did he present his claim in the court?

A. In the name of the Belding heirs.

19 Q. Did he pay taxes on this property?

A. Yes; for the Belding heirs. I have seen it on the tax book taxed to the Belding heirs.

20 Q. When did he make the Sabin purchase?

A. In the spring of 1852.

21 Q. Has he been upon the land ever since?

A. I do not know that he has been on it personally. He has travelled considerably. Most of the time he had been residing there. I do not think his family have resided in Chicot county since that time only on a visit. About 1876, at one time, his niece, Mrs. White, ran that house as a boarding-house, and she and his family lived on the farm. There has been some of the family always there. They always claimed it as a home.

22 Q. Did not Major Gaines and his family reside on his place near Sulphur Springs while Mrs. White kept that boarding-house?

A. I think likely he did.

23 Q. Did they not live in Chicot county sometimes?

A. I do not think he did. I do not think he has owned that plantation for 8 or 9 years. I do not know just when he got out of the possession of it, but I guess it was when he went into bankruptcy and his creditors seized it.

168 24 Q. Did they seize his property on the reservation here?

A. I do not think they did.

25 Q. That was the property of the Belding heirs?

A. He built houses here.

26 Q. Did he claim them in his own name or that of the Belding heirs?

A. I never inquired into that. I think he paid taxes on the whole thing. He did not build them for me, and never proposed to give me anything out of them.

27 Q. Did not he live in Texas awhile?

A. I think not. He went there during the war to have his eyes operated on. His family was here most of the time, and I guess all the time. He was in Texas only a short time.

28 Q. You say he obtained possession of this property by the action of the courts?

A. The most of it, not the most in bulk, but that he obtained the possession for the Belding heirs from most of the parties who had possession of it.

29 Q. Do you know where Mr. Nichols' blacksmith shop was?

A. Down there where Booth has a butcher shop, just below Shipley's store. The candy shop is in a part of it.

30 Q. Who is in possession of that?

A. I think Mr. Nichols is.

31 Q. Did Major Gaines attempt to get possession of it?

169 A. He has a lawsuit pending.

32 Q. Did you know a man by the name of Boatwright?

A. Yes; he was about the shop there with John Salmons some time.

33 Q. Do you not know that he bought Salmons out?

A. No, sir.

34 Q. You stated that Major Gaines got possession of these peices of land by the action of court. How do you know that?

A. By his taking possession at the hands of a public officer.

35 Q. Do you know whether Boatwright got possession of this property in the forks of the road?

A. I have been told so.

36 Q. How did you buy the Turnbull theatre?

A. Turnbull was several hundred dollars in my debt and I had to take the building in order to get my money. The Major and I bought together, and afterwards I sold my half to the Major and he paid me costs for it, more or less. I think the entire cost of the building was $1,700. Major Gaines cut it up into rooms, and I understood it was to be used for a boarding-house.

37 Q. Do you know whether he claimed this property in his own name or that of the Belding heirs?

170 A. In his own name, I suppose. It was personal property, and he bought of me. I did not consider that we had any title to the land. I expected at the time that he would get a title.

38 Q. Whatever became of all those old buildings that you have described?

A. I suppose they all got burnt up except some that are standing. The old grocery house that I sold goods in was moved down to the Sentinel office and is in the rear of a part of the house, and the old Butler residence is in the rear of a part of that Job Ward building, very close to the St. Louis saloon, on the north side. I do not believe there are any more standing on the west side till you get to the Kimball house. That is standing. On the other side the old Sweiptzer house is standing in the rear of a part of the Allen house now. There are some cabins there that the Major had, south of the theatre building, which was occupied since the war by a man by the name of Vose as a bakery and afterwards by Bush. That is all I know of unless there are some old log cabins across the creek there that a man by the name of Puckett had. On the east side of the creek there is not a vestige of a house on the Sabin place that was there when I first came here. The log kitchen that is

171 there was built afterwards. His dwelling was built entirely new. The old house was torn away.

39 Q. How far east did the south fence go?

A. It went past the colored church and to the turn of the hill, but not down the hill to the other side.

40 Q. Did the fence on the east side of that lot run south to Gerhart's house, where he lives now?

A. I think it did. It turned and went right up the hill.

41 Q. There was no Gaines avenue there then?

A. No; there were two Benton roads, and the main travel ran along by Major Gaines' fence.

42 Q. Had Major Gaines a power of attorney from the Belding heirs?

A. I think he had.

43 Q. Do you know the terms of it?

A. No, sir; I was a minor then and did not execute it.

44 Q. Was there a power of attorney executed here lately?

A. Yes; three or four years ago. I signed it.

Cross-examined by B. F. RICE, counsel for J. D. Chidester:

45 Q. You say Kempner occupied the grounds covered by the El Paso stable?

A. Yes; there was a row of cabins that extended along the road, and he occupied these. I do not think he occupied the
172 back part of the ground.

46 Q. When was it those cabins were there?

A. I do not recollect when they were built, but I sold goods there in the fall of 1853 and up to the time of the war. They were said to have been burnt down during the war.

47 Q. What building was erected next on that ground where the stable now is?

A. I do not know of any but the stable. It was the next erected.

Questions by B. F. RICE, as attorney for Hot Springs R. R.:

48 Q. Was the Sabin property that Major Gaines bought, the most of it, south of Gaines avenue?

A. I do not think it was.

49 Q. Was the field south of the Gaines avenue enclosed by itself separately?

A. Yes; and it took in the cemetery. He ran the division fence between him and Mrs. Sabin that ran by the road, and he had a garden patch on one side of the fence and she had one on the other side.

50 Q. Where were the Sabin houses?

A. Right where his residence is now. They were in an enclosure by themselves, not in the same enclosure with the field. There was a road between run-ing down to the Malvern road. He had
173 a garden and horse lot and stable on the hill close to where the Episcopal church is. East of where his residence is he had a horse lot. There was a cross-fence between it and the house. There were several enclosures running east of the house. They were not in the same enclosure with the field; there was a road between.

Questions by JOHN M. HARRELL:

51 Q. Did you execute that deed on the date written in it?

A. Yes.

52 Q. You and your wife executed it on the 10th October, 1877?

A. Yes; that is her handwriting.

Questions by A. CURL, for Abraham Kempner:

53 Q. You said something about a cottage house occupied by Mr. Kempner near the south line of this claim, on the west side of the street.

A. Yes.

54 Q. Who built that house there?

A. I do not know who built the first building that was put there. I know Kempner had a log house built in the rear of the other for a kitchen.

55 Q. Was it as long ago as 1852 or 1853?

A. No, sir.

56 Q. What other improvements were there when you first knew the premises?

174 A. I never noticed anything but a little row of frame houses and probably an enclosure. There was a well at this end of the house.

57 Q. How long did Kempner live there?

A. Up to 1861 or 1862, after the breaking out of the war.

58 Q. Are the same buildings that were there when you first knew the place there now?

A. Yes; the same houses, and probably a log house back of it.

By A. CURL, as counsel for J. J. Sumpter:

59 Q. What became of the house known as the Malole house, that stood where the St Louis saloon is?

A. I sold goods in it till the fall of 1861. It was said to have been burnt down during the war. I removed to Saline county in the fall of 1861. I came here on the 3rd of March, 1863, and remained until the fall of 1863, and then went to Texas, and came back on the 10 of December, 1865. I had the house built that is there now myself in 1867.

60 Q. Do you know who built the storehouse occupied by Kempner, north of Sumpter's hotel?

A. No, sir; the first I ever knew of them there was a little log grocery somewhere about there. When I moved here in 1852 they were there and Kempner was doing business there then.

175 61 Q. Do you know when Mr. Sumpter first came into possession of the hotel property?

A. No; I recollect of seeing the old man Sumpter when he came here. I recollect of his family being here in 1847. I left his family in possession of that house when I went to Texas. James Sumpter himself was dead then; he died in the summer of 1861.

62 Q. You speak of hearing some of them say something about a contract between Gaines and Sumpter. What was your understanding of that contract?

A. My understanding was that Mr. Sumpter paid Major Gaines a consideration for the rent of the house, simply sufficient to show that he acknowledged him as his landlord. I believe it was a dollar a month.

63 Q. Did you understand that in the event that the Belding heirs failed to secure a patent under their certificate of entry Mr. Sumpter was to remain there as a squatter?

A. No, sir; I never had any understanding of the kind.

64 Q. Do you recollect the fence that ran along the north side of the Sumpter possessions before the war?

A. Yes; there was a picket fence there that ran west some distance. There was a considerable enclosure back there; they had a vegetable garden in it.

65 Q. Was there a vegetable garden in the rear of where the stage stable now stands?

176 A. Yes; it ran all along there.

66 Q. Does not the stable occupy a part of the ground occupied by that garden?

A. I think it would; it reaches back a considerable distance.

67 Q. Is the street wider now than it was then?

A. Considerably.

68 Q. What building now stands where the north room belonging to Mrs. Burke originally stood, on the west side of the street?

A. I think it was along where the Little and Jenkins building was.

69 Q. You said something about a passage-way going back to where the Masonic lodge met.

A. Yes.

70 Q. Going back there, did not parties pass through this large gate you speak of?

A. I think Mr. Sumpter fenced that off. I think there was a big gate there.

Questions by MURPHY and WARD, in behalf of Benj. W. Goode, Adams, Sumpter, Vaughan, and other claimants:

71 Q. Who built the house that you have spoken of as being on the land in 1860?

A. I do not know that I can state as to all. The log cabin that I spoke of, on both sides of the street, Major Gaines built.

72 Q. Did the Belding heirs build any of them?

A. No, sir.

73 Q. How many of them did Major Gaines build?

177 A. There were three double cabins he built, and he built one cabin up to another one that was there.

74 Q. Did he build one-half of the houses that were there in 1860?

A. Less than one-half of them.

75 Q. When did he get possession of those houses under the order of court?

A. About 1856.

76 Q. The houses were built at that time and parties living in them?

A. Yes; in some of them.

77 Q. How many of those houses did he or the Belding heirs or all of them together buy?

A. I do not know of any being bought except what was bought from Mrs. Sabin.

Questions by JOHN M. HARRELL:

78 Q. Have you the written agreement referred to in this deed?

A. Yes; at home.

Questions by W. P. WALSH, appearing for 31 claimants:

79 Q. You are a brother-in-law of Major Gaines?

A. Yes, sir.

80 Q. State how much property was on the Hot Springs reserva-

tion after the fire of 1864 constructed by and for the use and benefit of Major Gaines, on the land claimed by him in his petition here, or since the war, and that he was in possession of on the 24th of April, 1876.

A. There was a row of cottages in his yard that has been
178 built since the war; then I think there was an extension up the mountain. There was the Hot Springs hotel.

81 Q. Do you know that he built that?

A. Yes; I furnished him part of the lumber that went into it.

82 Q. Who furnished the money?

A. Major Gaines.

83 Q. What did he pay for the Sabin property?

A. I understood he paid $700.

84 Q. Do you not know it was the understanding that he was to deed that property to the Sabins; that it was merely a mortgage?

A. No, sir; I do not.

85 Q. How much of this property do you get if Major Gaines succeeds?

A. I do not know how liberal he may be. I will get a small part of it. I do not know — much. I am an interested party, sir.

86 Q. Is it not a fact that Major Gaines leased this property from Sabin before he purchased it? Do you not know that?

A. No, sir; I do not know of anything of that kind. He occupied it after he bought it. I never heard of his leasing it.

CHARLES BROWN sworn and examined.

Questions by HAMILTON BENJAMIN, in behalf of Gaines *et al.*:

1s- Q. State your name, age, and residence.

A. Charles Brown; age, 59; residence, Hot Springs county.

2 Q. When did you come to Hot Springs?

179 A. In May, 1851, I came here from Chicot county. Major Gaines raised me from a ten-year-old boy. I lived with him till 1861.

3 Q. Describe this Sabin field and its fences.

A. When they measured off the land that he bought from Mrs. Sabin, Henry Belding laid the worm for the fence between, and my boy and Billy Gaines built the fence. You commence at the corner of Runyon's fence, across the creek on this side. We commenced on the west side of the creek and crossed over and went east. Jordan Flowers is living on the line now. It ran east till it got beyond Jordan Flower's, and then it turned off and ran north and south and came on Hot Springs mountain this way.

4 Q. Taking this one field, did it go to the Benton road?

A. Yes; on the south side of the Benton road he had a garden, and on the south side to the turn of the road, the curve of the road, he had three different patches—a corn patch, an oats patch, and a potato patch.

5 Q. Did it run north to the Benton road?

A. It ran north to the mountain and did not fence up the road.

This field ran north to the Benton road and then came along in front of his house. It came up the Benton road to the valley and then right down to the curve of the road and took that in.

180 On the north side of the Benton road we had a calf lot running back east about 150 yards.

6 Q. On the west side of Valley street, Major Gaines' possessions, was there a fence enclosing that before the war—the whole thing?

A. Yes; there was on the right-hand side of the street. He had us fence it up because the parties complained that they could not keep the cattle and stock out of their houses.

7 Q. Do you know anything about the house Mrs. Sabin had on the east side of the creek and west of the street, above the crossing at one time near where the old theatre was?

A. I do not remember whether she owned that or not. Gates and Montgomery occupied it.

8 Q. State whether below the crossing it was fenced up before the war—on the west side of the creek and the east side of the street.

A. Not to my recollection. There was a passway between the creek and the Major's house, lot, and garden on the east side of the creek. On the west side it was open. The brick yard was fenced up on the south side of the road.

9 Q. State if you know of Mrs. Gaines in 1865 fencing up the lot opposite the Hot Springs hotel.

A. Yes; she had Wesley Matthews to lay the worm in April, 1865, and we picked rails from across the creek and put up the fence.

181 10 Q. How much was fenced up?

A. I cannot say how much, but there was a pretty good scope that is now idle; mighty near every bit of that ground that is in front—that is in front of the Sumpter house.

11 Q. How long was that fence there?

A. It was there in 1866; some of it—part of the south line.

Questions by JOHN M. HARRELL:

12 Q. Did you belong to Major Gaines before the war?

A. Yes, sir; I had been out of his employment ever since January, 1866. I live on the Malvern road, about a mile from his farm.

13 Q. How far was that horse-lot fence from the house?

A. There was a big road between the calf lot and the horse-lot gate and the house.

14 Q. His east fence was how far from the house?

A. About 150 yards.

Questions by Mr. WALSH:

15 Q. What use did they make of this ground after they fenced it?

A. He kept calves in there and raised potatoes. I did not work for him, though, in 1865. That was before the war. Mrs. Gaines put it there in 1865 for a garden, but she did not put it to any use.

Questions by A. CURL, as attorney for John T. Sumpter:

182 16th Q. What sort of a fence was it she had put around the Sumpter lot in 1865?

A. A rail fence 8 or 9 rails high.

17 Q. Did you see it put there?

A. I saw it afterwards. It was burnt down, and I went along where it had been and picked up the rails.

18 Q. How do you know Mrs. Gaines built it?

A. There was nobody else to build it, and she told me she built it. There was nobody here but a few old women and Dr. Colten (or Golden) and Mr. Davis.

19 Q. When did the balance of that fence leave there?

A. I do not know.

By Commissioner COBURN:

20 Q. Who cultivated that garden?

A. No person at all. It was used in old man Sumpter's lifetime as a garden and horse lot. The parties came in afterwards that are on it now, and they did not fence it. They came in in the fall of 1865. There was no house there. They lived at Willoughby's place, and they came there to build.

11 Q. Who did?

A. Mr. Sumpter.

12 Q. Did they take possession of that lot in 1865?

A. Yes, sir.

13 Q. Was the fence standing when Mr. Sumpter returned and took possession?

A. Part of it was on the south.

183 15 Q. You are certain that Mrs. Gaines did not use it after it was fenced up?

A. She did not plant a seed in there. My boy owns that. He put that fence there; him and Billy Gaines.

JOE CRITCHER sworn and examined.

Questions by Mr. BENJAMIN, for Wm. H. and Maria Gaines:

1 Q. State your name, age, and residence.

A. Joe Critcher; age, 25; Hot Springs.

2 Q. State whether you were employed by Mrs. Gaines in 1865 to fence up the property opposite the Hot Springs hotel called the Sumpter property.

A. Yes, sir.

3 Q. State whether you made the fence.

A. I hauled the rails and Mr. Matthews put the fence up with the help of the old man's son and myself.

4 Q. Did you make a good fence?

A. Yes.

5 Q. What ground did you fence up?

A. About an acre and a half.

6 Q. Where was the south line of the fence?

A. Right in front of Major Gaines' old building, back of the Hot Springs house.

7 Q. Was there a rail fence?

A. Some rail and some plank.

Questions by Mr. CURL:

8 Q. How far back did that enclosure extend?

A. Far enough to make an acre and a half square. It was
184 either that or more. It was a good, big garden.

9 Q. What time of year was that built?

A. It was in the early winter.

10 Q. How old were you then?

A. About 18 or 20.

11 Q. Was that while the war was going on?

A. The fence was there when Mr. Sumpter got home from Texas, and when he got back he took possession. It was built before anybody got back from Texas.

12 Q. Who told you the fence was there when Mr. Sumpter returned?

A. I know it was there. He had to tear some of it down before he could get it fixed like he wanted it. I saw the fence pulled down.

13 Q. Who told you it was in 1865 that fence was built?

A. As a matter of course I knew about the time the fence was built.

14 Q. What year of our Lord is this?

A. This is 1868—no; 1878, I mean.

15 Q. How were the planks put up on that fence?

A. Some of them were nailed to a kind of posts set in the ground.

16 Q. How did Mrs. Gaines use that lot after it was fenced?

A. She did not use it, because her stock died before she got to use it. They did not raise anything in there.

185 ELIJAH HARRIS sworn and examined.

Questions by Mr. BENJAMIN, for Wm. H. and Maria Gaines:

1 Q. State your name, age, and residence.

A. Elijah Harris; age, 48; Hot Springs.

2 Q. State whether in 1874 you were employed to build some fence for Major Gaines.

A. Yes; I built some fence running very close to the old stable, on the Benton road, and running from there half a mile, to where old man Jimmy lives, close to the depot. We came up from the mountain to the Hot Spring house and closed it, and just the same way on the other side. We enclosed the Baptist church. I guess we enclosed about 50 or 60 acres; it may have been over. We enclosed it with a good, substantial fence of posts and planks. He hired a fellow to keep the fence up for near two months; when he quit keeping the fence up people tore the planks off. I suppose there is some of it there yet. It stood along the road there as an enclosure for a year or better.

Cross-examined by JOHN M. HARRELL, for James O. Ducker:

3 Q. What time in 1874 was it you ran than fence?

A. The last days of December and first of January.

186 4 Q. When you were building that fence back of Jimmy's, on the side of the hill, did you not fence between some buildings started on the left and north to the Benton road, between Ducker's office and the Benton road?

A. Yes; but there was no fence then. He had started to clear and had some lumber there, and we went and fenced right up on the mountain, and of course he was inside, and we fenced him in.

5 Q. Was he arrested and imprisoned?

A. I do not know what they did with him. I never saw him any place, only in the court-house, where he was the next week at the trial.

6 Q. What became of the lumber he hauled there?

A. I cannot say. The hands that worked with me never touched it.

7 Q. When you commenced work there did not he have his posts in the ground?

A. No, sir.

8 Q. Do you know whether he pulled down that fence in order to get his wagons through when they came with lumber?

A. I know that he had it torn down and the planks knocked off and drove through.

Questions by W. P. WALSH:

9 Q. Do you recollect when you were building this fence for Major Gaines in 1874, when you constructed it along the line where Towle and those colored people lived, it was not Sunday?

A. No, sir; it was not.

187 10 Q. Did you not work on Sunday?

A. That fence was built along there in the week.

11 Q. Did you not run the fence right through Becker, Goodman, Houseman, and Towle's yards?

A. No, sir; their houses were left outside. There was no building left on that side of the fence.

12 Q. Did you leave their well on the other side of the fence?

A. If there was any well there it was not finished; it must have been just a well started.

13 Q. Did not you and Mr. Ducker race in building that fence to see who could get through first?

A. No, sir.

14 Q. His fence was inside of yours six feet?

A. I do not know the distance. He had no fence there when we built ours.

15 Q. Did he have any fence there at all?

A. No, sir; he was just fixing to build a fence. He was getting his poles, and his hands were starting to dig the holes. They had their picks and spades there. They began to dig holes for the posts and we got by there and they stopped.

16 Q. How many holes did they dig?
A. I do not know. The place that they started to enclose in was not more than twice as big as this house.

And further the witness saith not.

188 FEBRUARY 12TH, 1878.

In the Claim of WM. H. and MARIA GAINES, No. 784—Continued.

NATHAN H. CLOYES sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.
A. Nathan H. Cloyes; age, 50, and reside here.
Q. Look at that paper and see if it was given by you.
A. Yes, sir; Mr. Curl wrote it and I signed it. I sold the improvements stated there.
Q. It says all improvements, including the residence. Where is that?
A. Where the street starts out below the grave-yard, on the west side of the Malvern road. All the improvements stated are upon the ground. I made 2,000 brick there; had it all enclosed.
Q. Do you—who built the fence that enclosed that lot right north of the church or adjoining the Methodist church?
A. I put the lumber there and had it built for Major Gaines.
Q. Before or since the decree?
A. Before; right after I built the church.
Q. Do you know anything about the fences that Major Gaines had around the Sabin field and whether they were kept up until after the decree?
A. Yes, sir: parties kept pulling it down all the time.
Q. Did they keep repairing it?
189 A. Yes, sir; for two years. I hauled plank several times for Major Gaines to put it up. I cultivated it for two or three years myself.
Q. You were here in 1865?
A. Yes, sir.
Q. State whether you know anything about a fence built on what is commonly known as the Sumpter possession.
A. There was a fence built there. It was understood that she fenced it. The stable was not there then.
Q. Who occupies it now?
A. It is right in front of the Sumpter house.
Q. All that property in front of the Sumpter house?
A. Yes, sir; where Hobson's office is, and runs back to the Sumpter house.
Q. Do you know what became of that fence?
A. A portion of it was torn down. It was broken down there when they were building the stable. They kept the fence up there as well as they could. It was a general camping place. In 1870 a new fence was put up there entirely.

Q. Who put that there?

A. Billy Sumpter was bossing it; had some hands to do it.

Q. And they were armed with shotguns?

A. Yes, sir; the parties working there were armed. They built the fence clear down to Simmons' property, right where the Methodist church stands.

190 Q. On the front or back?

A. All on the front. They went down the front until they came to what is called the Smokey road and went up the hill there. Dr. Hobson afterwards built a dwelling-house right upon the edge of the fence.

Cross-examination by Mr. HARRELL:

Q. When speaking of the fence, which you say you repaired and cultivated the ground within it, to which did you refer?

A. I refer to the old field fences. It did enclose some wood lands. It did not go on the mountain there.

By Mr. WALSH:

Q. You spoke of a stable in your testimony. To what do you refer?

A. Chidester stable.

Q. Do you state as a fact that this fence referred to in your testimony was torn down to construct that stable?

A. I didn't pull it down.

Q. Do you know whether there was a fence there when that stable was constructed, to your own knowledge?

A. I don't know as there was a fence there right at the time of the building of the stable, but just before the building.

Q. How long before?

A. Three months.

Q. You spoke of a fence being built there in 1865. What time?

191 A. During the spring of 1865.

Q. What sort of a fence?

A. Plank fence.

Q. Any part of it rail?

A. Some along in front.

Q. How far back west from the street was the enclosure from the present street?

A. It rather come out in the street.

Q. Then how far east from the mountain?

A. I could not tell you; there was a fence behind Belding's store, and that fence went back to the old Sumpter garden and the quarter-section line.

Q. Was Belding's store standing there then?

A. Yes, sir.

Q. You said something about Dr. Hobson building a residence.

A. Yes, sir.

Q. Whereabouts?

A. Built immediately west of the South End drug store; maybe a little north.

Q. Do you know who lives there now?

A. No, sir; I do not.

Q. Was it within the Sumpter enclosure?

A. Yes, sir; inside of it.

Q. When was it built?

A. I do not recollect exactly the day; I know I delivered some lumber there and some brick.

Q. Is it not a fact that Sumpter built a house there in 1871 and rented it to Dr. Hobson, and he put an addition there?

192 A. I don't know but what there was a little building there called Dr. Hobson's; he was the only one occupying it as a residence that I know of.

Q. Do you know whether Belding had a storehouse there in 1865 or not, at the time you say this fence was built?

A. There was an old storehouse there.

Q. Do you know how long the fence remained there that Mrs. Gaines built?

A. No, sir; it was put up and torn down frequently.

Q. Did you live here regularly in 1865?

A. No, sir; I lived here six months in 1864.

Q. You said something of men being armed. Where was Sumpter? Where was the gun?

A. Sitting up against the fence.

Q. Do you know what he was doing with it?

A. No more than that he had men with him.

By Com. COBURN:

Q. How many did you see with arms?

A. But one.

Q. Who had that?

A. William Sumpter.

Q. Was that gun used in the frightening of any one?

A. He did not make any threats at all; he set the gun down by the posts and told them to go ahead and put up the fence.

Q. Some one was with him?

A. The men were already there; he had three or four hands to work on the fence; they commenced in the night and it was finished that morning.

193 Q. Any altercation at all between him and any one?

A. No, sir.

Q. Any opposition to the building of it?

A. No, sir; I did not see any opposition at that time.

Q. Mr. Sumpter set the gun down before the hands went to work?

A. Some of them were working; nobody interfered with him.

Q. How long did he stay there with the gun?

A. He seemed to be protecting the hands. He was not there more than two hours and a half getting the fence completed. He was there all the time. The last time I saw him he was going below, down towards the Methodist church, putting up the fence.

Q. You said the fence was commenced at night. How do you know that?

A. I was in town, at Ellsworth, the evening before, and the new posts were not set then, but the next morning they were there and nailing the fence to them.

Q. Did you see anybody at work on it that night?

A. No, sir.

By Mr. RICE:

Q. Where did that fence commence on the north?

A. Adjoining Chidester's stable.

Q. Southwest corner of the stable?

A. Yes, sir.

194 Q. It did not enclose it?

A. No, sir.

By Mr. WALSH:

Q. You acted as agent of Major Gaines for several years?

A. Yes, sir; nearly two years; use to rent some houses and collect the rents.

Q. What was Major Gaines' revenue a year—how many thousand dollars?

A. I do not know.

Q. How much did you collect as agent for a year?

A. I could not tell.

Q. Ten thousand a year?

A. I don't think it was.

SAMUEL H. STITT sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Samuel H. Stitt; age, 34, and reside at Hot Springs.

Q. Are you acquainted with William H. and Maria Gaines?

A. Yes, sir.

Q. State when you came to Hot Springs to reside.

A. In 1870.

Q. What business did you follow at that time?

A. Hotel-keeping. I opened the Hot Springs hotel.

Q. State whether you know anything about Sumpter and others fencing in the ground in front of that hotel in 1870 and how they done it.

195 A. I remember that a fence was put along in front or a little below the Hot Springs hotel.

Q. Who was engaged in it?

A. I remember that there was considerable talk at the manner the fence was put up; some excitement there, and parties were standing around armed.

Q. What were they armed with?

A. Shotguns.

Q. Who had them, according to your best recollection?

A. As far as I can remember, they were Mr. Sumpter, his brother, Mr. Daniels, William and George Sumpter. I don't know that they were all armed, but I remember there were two or three shotguns on the ground, and considerable comment was made of it by the visitors of the hotel, who had collected on the porch. Major Gaines started to go over, and I rather think his family tried to prevent his going; but he went over, and there was some little apprehension about his safety.

Q. Did they remain armed until the workmen built the fence?

A. As far as I can remember, they did.

Q. Was there any fence there previous to that time, in 1870?

A. I can remember part of an old fence down at the southeast corner of that lot.

Q. But no enclosure?

196 A. A remnant of a fence there—a skeleton of a fence.

Cross-examination by Mr. HARRELL:

Q. Who built the Hot Springs hotel?

A. Mrs. Gaines and Mr. Gaines. I furnished the house and run it on a partnership.

Q. What did it cost?

A. I do not remember exactly. When we opened it the hotel was not completed; considerable repairs were put on afterwards; it was plastered afterwards and an addition put on.

Q. Do you know whether there was any money borrowed from a lawyer in Memphis to build it?

A. I don't think there was.

By Mr. RICE, as attorney for Hobson:

Q. Was not that vacant ground from Chidester's stable down to where the stores are at present?

A. As far as I can recollect, it was open along there.

Q. Including Hobson's office, was not that all vacant in 1870?

A. As far as I can recollect, it was.

Q. Enclosed in any other way except the one just described?

A. I don't know as it was.

By Mr. CURL:

Q. Do you remember who the parties were that had arms?

A. I cannot remember exactly who they were.

197 Q. Were there many of them?

A. No.

Q. Was anybody opposing the construction of the fence?

A. Not that I know of.

Q. Do you know when that fence was built?

A. I do not remember the time of day; it seems to me when I saw this scene it was in the morning.

Q. Were you here in 1874?

A. Not all of the year.

Q. Do you know anything of Mr. Sumpter's building a fence there in 1874?

A. No, sir; I was in Washington in 1874.
Q. What is the relation existing between you and Major Gaines?
A. Friendly.
Q. Are you not the son-in-law of Mr. Gaines?
A. I am.

HIRAM IRWIN sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.
A. Hiram Irwin; age, 63, and reside at Hot Springs.
Q. Do you know whether there was a fence in 1865 built on the ground opposite the Hot Springs hotel; and, if so, who built it?
A. No, sir; I do not recollect. I recollect seeing a fence there distinctly after the war, but I do not know who built it.

198 Mr. Benjamin offers in evidence the pleadings in the case of Gaines and the Belding heirs against Wm. and Elizabeth Sumpter, filed January, 1866; also a writ of possession for the property commonly known here as the Sumpter property, and the return of the sheriff putting Gaines in possession under mean process.

WILLIAM H. GAINES sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.
A. Wm. H. Gaines; age, 80, and reside at Hot Springs.
Q. State whether you ever made a lease in writing with James Sumpter or not.
A. I did.
Q. State what has become of that lease.
A. I have searched everywhere for it.
Q. Have you any copies?
A. There was in a good many cases.
Q. Look at that and see if it is a copy.
A. I presume it is; they were all copied by a man by the name of Knight at Little Rock correctly, and some filed in court and proved.
Q. You are satisfied this is a correct copy?
A. Yes, sir; have had it read to me several times.

Copy of lease offered in evidence and marked Exhibit No. —.

Q. Was the store and three rooms that were reserved in this lease a part of the possession that you recovered by the writ of
199 possession and ejectment suit from Sumpter?
A. Yes, sir; leased them on the same day.
Q. To whom?
A. Kempner.
Q. Look at that and see if it is the lease you made.
A. It has been read to me. I know it is the lease.

Articles of agreement between Wm. H. Gaines and Kempner offered in evidence and marked Exhibit No. —.

Q. State what you know of this property being fenced up after the war by Mrs. Gaines and what occurred afterwards.

A. I got home on the 18th of May, 1865. That ground was fenced up partly with plank and rails in front of the Sumpter house. The Sumpter family had left here in 1864. My considering it her possession, and wanting to make a garden, had it fenced along there and it remained so for some time. After the Sumpter family came back they wanted to build in front. I objected to them doing it; they built back, then. How long the fence remained am not able to say, perhaps a year or two. Sumpter had taken possession; he tore down the fence passing through and used some of the rails elsewhere. My lawyer advised me to bring suit, which I did; they put
— the suits a long time and Judge Watkins, my lawyer, made
200 a proposition to Sumpter's lawyer to just pass them over without trying them, and I agreed to it. I think several courts were just passed in that way by an agreement of counsel. When the hotel was built the ground there became more valuable in 1870 or 1871, and one morning I found that Sumpters had been at work and put a fence along there. My people insisted that I should not go over there. I told them I should certainly go, as I had no fear. I went over there and had a few words with them and told them they were acting contrary to law and order and to stop fencing up the ground, and they said they would do it. They continued to fence it up and took in a good deal of ground in back, run it along down the street on the ground that I had been put in possession of by the sheriff in the suits brought after the courts gave me judgment against parties. They fenced up a great deal of ground they never had in possession and run a fence down off the mountain, fencing in my improvements. I paid no attention to it and just let them go on.

Q. Any of them armed?

A. I think they were all armed. I remonstrated against their acting in violation of law and order and that I was legally in possession of it.

By Mr. CURL:

Q. This lease that you showed here was executed at the time it bears date?

201 A. Yes, sir.

Q. How long after you got judgment against Sumpter?

A. Pretty soon afterwards.

Q. Was the suit based upon the certificate of entry of the Belding heirs?

A. Yes, sir.

Q. State if there was not an agreement between you and Mr. Sumpter before the trial of that case in February, 1856, by which Mr. Sumpter was not to answer in that suit and let judgment *nil dicit* go against him.

A. I think not.

Q. Was there not an agreement between you and he that he was to take these lands and remain in possession until the question of the right to the property was settled, or rather the right of the Belding heirs was determined, and in the event the Belding heirs did not obtain the right of entry he was to remain in possession?

A. No, sir; I got judgment against Sumpter for back rent. I did not want his money. I was only fighting for the land, and told him that he could remain there at a nominal price; told him he could give me these three houses for my own use, and that I would lease him all the balance and his bath-house. He told me
202 he would agree to it when he came home, but it was after the judgment. The judgments were all got at the same court, and the compromise was made in the presence of Sharp and Stedham, who drew the lease.

Q. Were you put in actual possession by the sheriff?

A. Yes, sir; did not put out Mr. Sumpter because he agreed to the compromise and signed the lease the same day. I leased to Kempner three rooms at $12 a month.

Q. Was this arrangement made at the time or previous to the time that the sheriff came with the writ of execution?

A. Yes, sir; he returned the execution satisfied.

Q. Did you build any house upon that land at that time?

A. No, sir.

Q. What title had you to the ground?

A. An occupant's title under the last act of Congress.

Q. At the time you say you made this lease, was it the time you brought the suit?

A. Yes, sir.

Q. What was your evidence of title at that time?

A. The suit shows that. The evidence of title was the certificate of entry and the purchase-money, and that was fully sustained by the courts and confirmed by the Supreme Court of the United States.

203 Q. Didn't you get that certificate of entry by representing to the departments at Washington that you simply wanted to get it to give you a standing in court?

A. I did not; my attorney may have done so.

By Mr. MURPHY:

Q. Did you not apply to the land office at Washington, Arkansas, first to enter this land—this quarter section?

A. I did not; Mrs. Belding had, long before I knew her.

Q. Did you afterwards apply, either in person or by attorney, at the land office at Washington, Arkansas, to get a certificate upon which you sued Sumpter?

A. No, sir; I applied to the Secretary of the Interior to refer the claim of the Belding heirs as filed there in the office back for re proof, all of which is here before the commission.

Q. Do you not know that your certificate was issued or ordered to be issued upon the representation made by yourself or your counsel

to the department that you merely wanted — to give you a standing in court, and not with the expectation of getting a patent upon it?

A. I do not know that there was any such thing.

Q. Was that your understanding?

A. I know I would never have any such thing.

204 Q. You don't know there was any such representation made to any of the departments to that effect or not?

A. I think it is possible my attorney, A. H. Mills, may have made application; I do not know it.

Q. Which one of the parties had the gun when they were fencing?

A. I would not be positive as to which one; I was too blind.

Q. Can you state that the fence you understood your wife to build enclosed that ground completely?

A. Yes, sir; the bulk of it.

Q. It made an enclosure around part of it?

A. Yes, sir; it was so when I got home the 18th of May.

Q. Was it the understanding between you and James Sumpter prior to or at the time of the execution of that lease that if that arrangement was made he should be left to remain in possession at a nominal rent until the question as to whether the Belding heirs would get a title should be settled; and if not settled favorably to them, was it not the understanding that then your rights as nominal landlord should cease and he should remain in possession without any reference to you or your rights?

A. Had no bargain of that sort.

205 Q. Was that the understanding between you?

A. I frequently said I should not claim anything; there was no particular understanding.

Q. Did you, in this city, or have you not in this place, frequently said since the war to John and William Sumpter that you made no claim to that land unless your title, or the title of the Belding heirs, should be sustained?

A. I do not think I had had any special contract of any sort.

Q. Have you made statements to them to that effect?

A. I claim the land under the laws of the country, and am entitled to it now. I made no claim to anything after the court decided against me. I disclaimed owning anything or having a transaction with anybody, buying or selling, until Congress passed the land law, which, I think, gives me a perfect right to the property. I do not say I am entitled to it. If I am entitled to it under the law of the country of possession and occupancy, I am the largest occupant. I have spent four times as much money on the property as anybody else, built more houses, and brought the property up into notice.

Q. Have you not in this city since the war talked to Wm.

206 and John Sumpter, the adverse petitioners, frequently about this matter, and have you not told them in these conversations that you had no claims against them whatever in reference to the land unless your pre-emption certificates should be sustained?

A. I am claiming——

Q. I am not asking you how you are claiming. Have you made such statements as those?

A. I think likely I have made such statements I made no such bargains with any one.

By Mr. RICE, attorney for Mr. Hobson:

Q. Since 1867 has there been any improvements on that piece of ground fronting the Hot Springs hotel, that was enclosed by your wife, except the fence that you have described that the Sumpters put up?

A. I think the fence that my wife put up there covered that very ground.

Q. In 1867, after that fence was away?

A. Is that the date of the lease to Chidester?

Q. The lease to Chidester? I am speaking of the ground south of Chidester's stable, including Dr. Hobson's office, and that vacant ground below there. Was there any buildings on that ground, any improvement except the fence that your wife built and was taken away, and since that, except the fence built in 1870 by the Sumpters?

207 —. Not by the Sumpters. There was a house built there adjoining the stable and Dr. Hobson's office.

Q. When were they built?

A. I cannot tell exactly.

Q. Before they were built was not that vacant ground, with the exception of the fence, put up in 1870?

A. Yes, sir.

Q. Had it not been vacant all the time after the time the fence was put up by your wife up to the time Dr. Hobson's office was built?

A. Yes, sir.

Q. And vacant at the time Hobson's office was built?

A. I think so.

By Mr. RICE, as attorney for Chidester:

Q. Has there been any improvements since the war in the way of buildings upon the lot of ground where the El Paso stable is now standing up to the time it was built?

A. No, sir; no improvements there when I leased the ground from Mrs. Chidester; might have been some patches of fence.

By Mr. BENJAMIN:

Q. Here is a contract between you and Walingford. Is that your signature?

A. Yes, sir.

Q. You had such a contract and it was reduced to writing?

208 A. Yes, sir; and built a house where Louis Bertsch now holds.

Q. State whether you had one with Gillis to build a stable.

A. Yes, sir.

Q. Where is that stable?

A. South of the house. Put all those buildings up and the dwelling-house at the same time, and that is where Toole and others are. Most of them are my houses, and when the receiver came they were turned over to him. They are the houses that I built.

Q. State whether you kept them up or tried to keep them up until after this decree.

A. Yes, sir; I tried all the time to keep them up.

Q. And were torn down frequently and repaired?

A. Yes, sir.

By Mr. HORRALL:

Q. Here is what purports to be a lease of a lot of ground by you to Gillis. Do you know whether or not that is the original lease?

A. I do not. I think there were two or three contracts with Gillis.

By Mr. BENJAMIN:

Q. Contract to build a stable?

A. I furnished all the lumber; had such a contract.

By Mr. HORRALL:

209 Q. Does this profess to be a lease between Wm. Gaines and Gillis for a parcel of ground situated on the east side (reading from lease)?

A. That is the ground exactly; it is the Gillis stable and dwelling-house which was cut into two apartments to rent, and the stable makes three.

Q. By what right did you assume to lease this ground—a right of yourself or as agent of the Belding heirs?

A. Myself; some of them were in the name of the Belding heirs and some in my individual name.

Q. Did you lease it as your own ground?

A. By representing the Belding heirs—being one of those heirs—and also representing Wm. Gaines individually. Where I have bought and built I have considered it my own property, not the property of the Belding heirs. These heirs will get from me all that they would be entitled to where I have got possession.

ALPHONSO CURL sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Alphonso Curl; age, 37, and reside at Hot Springs.

Q. State whether you were formerly an agent of Mr. Gaines.

A. I was the agent of Major Gaines and collected all his
210 rents in 1873 and some little time before that.

Q. Look at that lease and see if it was drawn up by you or not.

A. I wrote that lease.

HIRAM IRWIN recalled:

Q. Are you acquainted with Major Gaines and wife?

A. Yes, sir.

Q. State whether you were employed or assisted in any way in building a fence at any time for Major Gaines; and, if so, when and where.

A. I think it was about four years ago I fenced up a piece of land near where the depot now is. He came to me one day and made a proposition that we build a partition fence between us, he to furnish a part of the material and I was to do the work.

Q. Where was it?

A. It ran pretty much north and south on what was his line; it was built of cedar posts and of good planks; it ran upon the mountain, going north some 30 or 40 rods; then Major Gaines went with his hands, continued the fence up the mountain, and, I suppose, clear around. It enclosed about four acres near the depot.

By Mr. WALSH:

Q. When was this partition fence constructed?

A. About four years ago.

211 By Mr. RICE: From the point where you commenced that fence to run north, state whether there was a fence running south.

A. Yes, sir.

Q. How far this side of the depot was that fence?

A. Right near where Capt. Roe's stable now is, about forty steps this side of the depot.

By Mr. HARRALL:

Q. Do you recollect about what time it was that Major Gaines built that fence? Where did he commence it—at his house?

A. This new fence commenced, I think, at his horse lot—he had a horse lot around his stable—and went to the Benton road; then it turned and went north and then joined me.

By Com. COBURN:

Q. Was there any cleared land northeast of the horse lot?

A. I don't think there was in the piece I am speaking of now—the mountain side of the Benton road. It was just regular woods.

Q. Did you see anybody at the time Mr. Gaines was running his fence from the horse lot east attempting to put up improvements on the north side of the line?

A. I didn't see them at work, but saw plank and lumber where they said Mr. Ducker was putting up a building.

Q. Did you see anybody at work on that improvement at any time?

A. No, sir.

212 —. How much lumber did you see on the ground?

A. Really I do not know; some four *of* five loads.

GEORGE M. FRENCH sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. George M. French; age, 42, and reside at Hot Springs.

Q. State whether you made a survey of the Hot Springs reservation during 1875 or not.

A. I did.

Q. State the condition at that time of Major Gaines' fences and fields east of Hot Springs creek.

A. There was an old field southeast of the cemetery there and a fence along by the Malvern road, very near the township line, little north of it, but there was a fence along there that was intended to have been put upon the line and was out perhaps 1,600 feet, and was along in front of some houses built by the colored people on the hill; then there was a fence bearing to the left, running north, continuing on down, which would now be just east of the enclosure of Richard Irwin, north or west of the depot building, and joined a fence coming down on the south side of the Benton road. There was a fence on both sides of the Benton road.

Q. What fence was there on the north side of the Benton road?

213 A. There was an enclosure fence on the north side and an enclosure of a plank fence that took in the lot east of Major Nelson's place—seemed to be a horse lot—and further on was another board fence that ran up north, up the hill, as far, I should think, as the claim of Mrs. Murphy, on the side of the mountain; then followed down and included the house occupied by Mr. Davis, and came down and to the fence north of Major Gaines' residence, and joined on there.

Q. You were here when the receiver took possession?

A. Yes, sir.

Q. Do you know the condition of the fence about that time?

A. There had been an avenue opened up called the Gaines avenue; run down from the Benton road, south of the cemetery, to the depot. I mean the Malvern road.

By Mr. WALSH:

Q. What buildings were in the enclosure at that time?

A. A good many.

Q. Did you trace the lines?

A. Yes, sir; I traced all the enclosures and made all the lines on the map to correspond with them.

Q. What kind of a fence was on the top of the mountain?

214 A. Posts and rail on the mountain. The fence did not go on the top of the mountain. There is a line on the map showing that fence.

Q. You are positive there was a fence alongside of the mountain?

A. You remember where the stable burned down with the mules in it. It was right north of that. It started right opposite that and went right up the hill.

Q. Do you know whose fence that was?
A. I suppose it was Major Gaines'.
Q. Was there an enclosure east of that?
A. There was an enclosure on three sides, but none on the north side; east going out to the quarter-section line—going out to Mc Govern's.

By Com. Coburn:

Q. What was the condition of the ground east?
A. It was timber ground except around the house and horse lot.
Q. What was the condition of the ground east of Gaines avenue?
A. It had all been cleared, as now, as far as the depot building. On the left-hand side of the Benton road it was natural timber land until you got to Irish Jimmie; then there is a cultivated field there a little place where Roe's stable is now that had been cleared off.

February 12th, 1878.

Offered in evidence contract between Wm. H. Gaines and John J. Gillis, dated Feb'y 13, 1873, marked Exhibit A.

215 Also offers in evidence contract in regard to a building between Gaines and Foster and Walingford, dated 1st of January, 1871, marked Exhib- B.

Also a lease referring to the same parties in reference to building what is known as the Bertsch house, marked Exhibit C.

Also lease to Louis Bertsch from Wm. H. Gaines for the same property, marked Exhibit D.

Also contract of lease between Wm. H. Gaines and S. J. Bumton, marked Exhibit E.

Also bill of S. Cloves for certain improvements, dated Aug. 1st, 1873, marked Exhibit F.

Know all men by these presents that I, William H. Gaines, of the county of Garland and State of Arkansas, do hereby appoint and constitute Albert B. Gaines, of the city of Hot Springs, county of Garland and State of Arkansas, my agent and attorney-in-fact, for me and in my name to demand, obtain, and receive from the Hot Springs Commission any certificate, award, or any other paper or evidences of indebtedness that may be issued to me and in my name or for my benefit granting me pay for any buildings or improvements, condemned, situated on any of my claims, and to receipt to said commission in my name for any and all such certificates; also to receive in my name and stead and receipt for

216 same any certificate, award, or any other paper given by said commissioners to me giving me the right to purchase from the United States Government all lots or parcels of land described in my petition, number —, and to do any and all acts for me and in my name necessary to be done in order to secure a title from the United States Government to said premises to the same effect as if personally present. My said attorney is hereby empowered to perform all such matter as he may deem necessary for the purpose of

carry- out the objects herein mentioned, and I hereby ratify and confirm all that he may do in the premises.

Witness my hand and seal this 11th day of December, 1879,

WM. H. GAINES. [SEAL.]

STATE OF ARKANSAS, }
*County of Garland,* } ss:

Be it remembered that on this day personally appeared before the undersigned, a notary public within and for the county aforesaid, Wm. H. Gaines, to me well known as the person signing the foregoing power of attorney, and acknowledged that he executed the same for the uses and purposes therein mentioned and set forth.

Witness my hand and seal as such notary public on this 11th day of December, A. D. 1879.

JAS. G. ALLEN,
*Notary Public.*

[Seal Jas. G. Allen, Notary Public, Garland Co., Ark.]

217 This article, descriptive of the improvements of Abigail Dupass, late Abigail Sabin, at Hot Springs, in the county of Hot Springs and State of Arkansas, lately sold to Wm. H. Gaines and to be delivered to said Gaines on the 1st day of April, 1852, represents that the claim and improvements sold as aforesaid are as follows, to wit: Lying on the east side of Hot Spring creek, immediately at the foot of the Hot Spring mountains, including two hot springs on the spur of the mountain; also a number of cabins at the foot of the mountain, with stables, corn-cribs, a garden, and other lots adjoining the stable; also a field and other cleared land near said buildings; also a large field, or rather a part of said field, near by the improvements aforesaid; all of which said improvements as aforesaid extend over and cover some twenty acres, more or less, consisting of all the improvements on the east side of said Hot Spring creek, lying on the southwest fourth of section thirty-three, township two south, range nineteen west, except a small lot and dwelling-house known as Richard Puckett's and one other small cabin near the lower Hot Springs and a small mill-house and a cabin known as White's mill. The sale of the aforesaid improvements to the said Gaines is upon such condition and terms
218 as are especially set forth in the conveyance of the said Dupass to the said Gaines, heretofore made in writing, and this article is intended as a more full description of the premises aforesaid; and the said Abigail Dupass does hereby deliver unto Lydia Belding, for said Wm. H. Gaines, the entire possession of the premises aforesaid, and does hereby acknowledge the payment of seven hundred dollars to her, the said Dupass, being in full for the improvements and premises conveyed as aforesaid, this 25th day of March, A. D. 1852.

A. DUPAS.

*List of Real Property Assessed for Taxation in Hot Springs Co. for the Following Years.*

| Owners of land. | Part of sec. | No. of acres. | Section. | Town-ship. | Range. | Valuation. | Remarks. |
|---|---|---|---|---|---|---|---|
| Belding, Ludovicus | S. W. | 160 | 33 | 2 | 19 | 70000 | Assessor's book for 1862. |
| Belding heirs | S. W. | 160 | 33 | 2 | 19 | 20000 | " " " 1866. |
| Belding heirs | S. W. | 160 | 33 | 2 | 19 | 20000 | Collector's " " 1866. |
| Belding heirs | S. W. | 160 | 33 | 2 | 19 | 20000 | Assessor's " " 1867. |
| Belding heirs | S. W. | 160 | 33 | 2 | 19 | 20000 | Collector's " " 1867. |
| Belding, L., heirs | S. W. | 160 | 33 | 2 | 19 | 20000 | Assessor's " " 1868. |
| Belding, L., heirs | S. W. | 160 | 33 | 2 | 19 | 20000 | (Before reconstruction. (Collector's book for 1868. |
| Belding heirs. Sam. Tate & Co | *S. W. | *160 | *33 | ..... | ..... | 10000.00 | (Assessor's " " 1868. |
| Belding heirs | S. W. | 160 | 33 | 2 | 19 | (10000 (70000 | After reconstruction. (Injunction, 1868. |
| Ct. c't sustains injunction, collector credited same. | | | | | | | |
| Belding heirs | S. W. | 160 | 33 | 2 | 19 | (60000 (10000) | Assessor's book for 1869. |
| Belding heirs | S. W. | 160 | 33 | 2 | 19 | 10000 | Collector's " " 1869. |
| Belding heirs | W. S. W. | 160 | 33 | 2 | 19 | 15000 | Assessor's " " 1870. |
| Belding heirs, 1870 | S. W. | 160 | 33 | 2 | 19 | 15000 | Collector's " " 1870. |
| | | | | | | Equalized to 880000. | |
| Belding heirs | S. W. | 160 | 33 | 2 | 19 | 10000A | Collector's " " 1871. |
| Belding heirs | S. W. | 160 | 33 | 2 | 19 | 80000 | Collector's " " 1872. |

* Erased in copy.

STATE OF ARKANSAS, }
*County of Hot Spring.* }

219 I, John W. Keith, clerk of the circuit court in and for said county, do hereby certify that the annexed and foregoing is a true and perfect copy and transcript of the assessment of the foregoing land as the same appears on the tax books now on file in my office for the years as set forth in said transcript; and I further certify that the tax books from the year 1852 to 1862 are not to be found in their office; that the same were lost during the war or burned with the court-house in 1873.

In testimony whereof I have hereto set my hand and [SEAL] the seal of said court on this 12th day of February, A. D. 1878.

JOHN W. KEITH, *Clerk.*

Know all men by these presents that I, George Belding, in consideration of one dollar in hand paid and a written agreement bearing even date herewith to convey a certain portion set out in said written agreement that may be awarded to Wm. H. and Maria Gaines, do quitclaim, transfer, assign, set over, and release all my right, title, and interest of every description in and to the southwest quarter of section (33) thirty-three, township (2) two south, and range nineteen west, except that portion on the east side of Valley street and south of and adjoining the ground leased by R. B. Clyde from Wm. H. Gaines, and extending south to the section line

220 and east to Hot Springs creek, which property said George Belding has had in his possession for more than seven years, in the county of Garland and State of Arkansas, and which forms a part of what is commonly known as the Hot Springs reservation, to Wm. H. Gaines, his heirs and assigns; to have and to hold forever.

In witness whereof we have hereunto set our hands and seals, at Hot Springs, Arkansas, this 20th day of October, 1877.

GEORGE BELDING. [SEAL.]
AMANDA BELDING. [SEAL.]

COUNTY OF GARLAND, }
*State of Arkansas.* }

Be it remembered that George Belding, personally well known to me to be the party grantor signing the foregoing deed, — and acknowledged that he signed the same for the purposes therein stated; also at the same time and place appeared Amanda Belding, wife of said George Belding, and, in the absence of her said husband, acknowledged that she had signed her relinquishment of dower for the purpose therein stated and without any undue influence from her said husband, and I do so certify this 20th day of October, 1877, at Hot Springs, Arkansas.

GEO. W. BAXTER,
*Notary Public.*

221 [Seal Geo. W. Baxter, Notary Public, Garland Co., Ark.]

STATE OF ARKANSAS, *set:*

In the Supreme Court.

Be it remembered that at a term of the supreme court of the State of Arkansas begun and held at the court-house, in the city of Little Rock, on the first Monday of January, A. D. 1855, amongst others were the following proceedings, to wit, on the 23d day of February, 1855, a day of said term:

PATRICK BURKE, Appellant,
*vs.*
WILLIAM H. GAINES *et al.*, Appellee. } Appeal from Hot Springs Circuit Court.

This cause came on to be heard upon the transcript of the record of the circuit court of Hot Spring county and was argued by counsel. In consideration whereof it is the opinion of the court that there is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the court that the judgment of said circuit court in this cause rendered be, and the same is hereby, in all things affirmed with costs.

It is further considered that said appellees recover of said appellant all their costs in this court in this cause expended and have execution therefor.

222 In testimony that the above is a true copy of the judgment of said supreme court rendered in the case therein stated I, Luke E. Barber, clerk of said supreme court, hereto set my hand — affix the seal of said court, at my office, in the city of Little Rock, this 7th day of February, A. D. 1878.

Seal of the Sureme Court of Arkansas.

L. E. BARBER, *Clerk.*

223 Your petitioner avers that at the time *they* ertered the premises herein claimed as aforesaid one Patrick Burke had made and claimed to own and had possession of certain improvements on the west side of Valley street, and your petitioner brought suit against said Patrick Burke on the 5th day of January, 1852, for said improvements and possession and recoyered judgment therefor, which judgment was affirmed by the supreme court of the State of Arkansas and *bw* the Supreme Court of the United States, and on the 26th day of November, 1857, your petitioner, William H. Gaines, was by the court put in actual possession of said premises and improvements, and peac-ably continued to possess, control, use, and rent said premises until and including the 24th day of April, 1876, a period of more than twenty years; and after your petitioner had used and rented said improvements for over — years they became old and delapidated and were insufficient to meet the demands of a growing town and of the large number of visitors that annually came to thi Hot Springs for their health, and your petitioner, desiring to aid in meeting that demand, on the 11th day of April, 1874, leased the following ground to Bell & McCarty, to wit: commencing at a point 17° 30′ E. of sec. cor. post for sections 32 and 33, T. 2 S., and sec. 4 and 5, T. 3 S., all in range 19 west, and distance therefrom 487 ft., thence bearing S. 83° W. 30 ft., thence S. 77° 15′ 10 84 ft., thence S. 7° E. 12 ft., thence N. 83° E. 120 ft., thence N. 7° W. 20½ ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. *M.* S., R. 19 W., all of the above bearings being read from the magnetic meridian, with the privilege of erecting new and more commodious buildings thereon, and all the parties to said lease covenanted and agreed that said Bell & McCarty might remove said new buildings within thirty *fays* after the lease expired, provided the rents were fully paid; but it was expressly covenanted and agreed that no buildings should be removed unless the rent was all paid, and that the same were to be removed within thirty days after the expiration of the lease—that is to say, all buildings erected by Bell & McCarty and assigns
224 were to be the property of Wm. H. Gaines unless all rents were fully paid and unless the buildings erected were removed within thirty days after the expiration of the lease. Your petitioner avers that the rents upon said lease have not all been paid; that there was due on the 1st day of April, 1876, the sum of ($23.59) twenty-three dollars and fifty-nine cents, which rents still remain due and unpaid; and your petitioner avers that said lease, by its own terms, long since expired, and that said Bell & McCarty and their assigns have wholly failed both to pay said rent and to remove said buildings within thirty days after the expiration of the lease; and your petitioner expressly avers that in consequence of said failure to pay said rent and remove said buildings as aforesaid that said buildings and improvements thus erected became and are the property of your petitioner, Wm. H. Gaines, both by agreement of the parties and by the law of the land; that the said improvements were made previous to the 24th day of April, 1876, and are worth the sum of four hundred dollars. Your petitioner is informed that

Henry A. Booth is setting up some pretended claim thereto, which claim is wholly unfounded in law and equity and is contrary to good conscience. Said Booth nor said Bell & McCarty ever occupied or claimed said premises in their own right previous to April 25th, 1876.

A copy of the lease is hereto attached and marked Exhibit 11 and prayed to be taken as part hereof.

225 Your petitioner avers that at the time they entered the premises herein claimed as aforesaid one Patrick Burke had made and claimed to own and had possession of certain improvements on the west side of Valley street, and your petitioner brought suit against said Patrick Burke on the 5th day of January, 1852, for said improvements and possession and recovered judgment therefor, which judgment was affirmed by the supreme court of the State of Arkansas and by the Supreme Court of the United States, and on the 26th day of November, 1857, your petitioner, Wm. H. Gaines, was by the courts put in actual possession of said premises and improvements, and peac-ably continued to possess, control, use, and rent said premises until and including the 24th day of April, 1876, a period of more than twenty years; and after your petitioner had used and rented said improvements for over — years they became old and delapidated and were insufficient to meet the demands of a growing town and of the large number of visitors that annually came to the Hot Springs for their health, and your petitioner, desiring to aid in meeting that demand, on the 15th day of June, 1874, leased the following ground to Bell & McCarty, to wit: commencing at a point N. 16° E. of sec. corner post for sec. 33 and 32, T. 2 south, and sec. 4 and 5, T. 3 south, all in range 19 west, and distant therefrom 508 ft., thence bearing south 77° 15′ W. 112 ft., thence S. 12° 45′ E. 22 ft., thence N. 77° 15′ E. 112 ft., thence N. 12° 45′ W. 22 ft. to point of commencement, lying and being in the S. W. ¼ of S. W. ¼, sec. 33, T. 2 south, range 19 west, all the above bearings being read from the magnetic meridian, with the privilege of erecting new and more commodious buildings thereon, and all the parties to said lease covenanted and agreed that said Bell & McCarty might remove said new buildings within thirty days after the lease expired, provided the rents were fully paid; but it was expressly covenanted and agreed that no building should be removed unless the rent was paid, and that the same were to be removed within thirty days after the expiration of the lease—that is to say, all buildings erected

226 by Bell & McCarty and assigns were to be the property of Wm. H. Gaines unless all rents were fully paid and unless the buildings erected were removed within thirty days after the expiration of the lease.

Your petitioner avers that the rents upon said lease have not all been paid; that there was due on the 1st day of April, 1876, the sum of ($23.59) twenty-three dollars and fifty-nine cents, which rent still remains due and unpaid; and your petitioner avers that said lease, by its terms, long since expired, and that said Bell & McCarty and assigns have wholly failed both to pay said rent and to remove said buildings within thirty days after the expiration of the lease;

and your petitioner expressly avers that in consequence of said failure to pay said rent and to remove said buildings as aforesaid that said buildings and improvements thus erected *become* and are the property of your petitioner, Wm. H. Gaines, both by the agreement of the parties and by the law of the land.

That said improvements were made previous to the 24th day of April, 1876, and are worth the sum of three hundred dollars.

Your petitioner is informed that Bell & McCarty are making no claim to said property, but that one Mrs. —— Lewis, M. D., is setting up some pretended claim thereto, which claim is wholly unfounded in law and equity and is contrary to good conscience. Said Lewis nor any one through whom *they* claim ever occupied or claimed said premises in *their* own right previous to April 25th, 1876.

A copy of the lease is hereto attached and marked Exhibit 12 and prayed to be taken as a part hereof.

227 This agreement of lease, made this 11th day of April, 1874, between Wm. H. Gaines, as lessor, and McCarthy and Bell, as lessees, witnesseth: That the *lessees*, for and in consideration of the covenants hereinafter agreed to be performed by the lessees, has leased and demised unto the lessees a certain lot or parcel of land lying and being situate in the town of Hot Springs, in the county of Garland, in the State of Arkansas, and described as follows, to wit: the space between the two (2) log buildings situated on the west side of the street, near the south end of Hot Springs valley, heretofore known as "log or smoky row," embracing a front on the west side of said street of nineteen (19) feet, more or less, and running back west from and at right angles *from* said street the same width to the Sumpter fence; to have and to hold the same unto the said lessees, McCarthy and Bell, from the 10th day of April, 1874, until the 10th day of April, 1875, to be renewed from year to year until the title to the Hot Springs quarter section of land is settled, if the lessees or their legal representatives shall so desire; and the lessees covenant and agree to pay to the lessor or his legal representatives, as a rent on the above-named premises, the sum of one hundred and eight*u* dollars per annum in installments of forty-five dollars each on the 10th days of April, July, October, and January for each and every year during the continuance thereof, and to surrender peaceable possession of said lot to the lessor or his legal representatives at the expiration of this lease.

All buildings or other improvements that may be erected on said lot by the lessees during the continuance thereof may be removed therefrom by the lessees or their legal representatives at any time within thirty days after the expiration of this lease; provided, however, that the lessor shall have a lien on all such buildings and improvements to secure the payment of the rent hereinabove provided for, and no such building and improvement shall be removed from said lot while said rent or any portion thereof shall remain due and unpaid, and if the lessees or *his* legal representatives shall make default and be in arrears with said rent or any part thereof
228 for fifteen days at any one time the lessor or his legal

representatives may enter upon the premises and eject the lessees or their legal representatives therefrom and repossess himself of the same without notice or other legal process. This lease shall not be assigned nor the premises underlet without the written consent of the lessor or his legal representatives being first endorsed hereon.

Witness the hands and seals of the parties, at Hot Springs, this 11th day of April, 1874.

WM. H. GAINES. [SEAL.]
McCARTHY & BELL. [SEAL.]

229 This agreement of lease, made this 15th day of June, 1874, between Willaim H. Gaines, as lessor, and J. H. McCarthy and W. T. Bell, under the firm name of McCarthy & Bell, as lessees, witnesseth:

That the lessor has leased and demised unto the lessees a certain lot or parcel *od* land lying and being situate in the county of Garland and State of Arkansas and described as follows, to wit: Be-ing at southeast corner of log cabin situated directly north and adjoining McCarthy & Bell's store, on the west side of the street near the south end of Hot Springs valley, runs thence north along said street twenty (20) feet; thence west at *the* right angles with said street to the Sumpter fence; thence south along said fence twenty feet; — east parallel with the second line to the place of beginning; to have and to hold the said lot unto the said lessees for a term of one year from the first day of October, 1874, for the annual rent of two hundred dollars, to be paid in installments, quarterly, in advance, as hereinafter provided; and the lessees covenant and agree to pay the lessor or his legal representatives the said annual rent of two hundred dollars in installments of fifty dollars each on the first day*s* of October, 1874, and on the first days of January, April, and July, 1875; and it is agreed that all buildings that may be erected on said lot by the lessees may be removed therefrom by the lessees or their legal representatives at any time within thirty days after the expiration hereof; provided, however, that the lessor shall have a lien on all such baildings to secure the payment of the rent hereinabove provided for, and no such buildings shall be removed from said lot while any part of said rent shall be due and unpaid; and if the lessor shall at any time make default and be in arrears with said rent or any part thereof for ten days after the same shall become due the lessor may, at his own discretion, enter the premises, eject the lessees or their legal representatives therefrom and repossess himself of the same without notice or other legal process, and terminate this lease.

230 This lease shall be renewed from year to year until the title to the Hot Springs quarter section shall be settled, if the lessees shall so elect and comply in all respects with their covenants herein, upon the same terms and conditions set forth herein for the first year. This lease shall not be assigned nor the premises underlet without the written consent of the lessor being first endorsed hereon.

Witness the hands and seals of the parties hereto this 15th day of June, 1874.

WM. H. GAINES. [SEAL.]
McCARTHY & BELL. [SEAL.]

231 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.
WASHINGTON, D. C., *June 28th*, 1884.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of petition No. 248, before the Hot Springs commission, testimony submitted in support of same, and the finding of the commission are true and literal exemplifications of the originals on file and on record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] N. C. McFARLAND,
*Commissioner of General Land Office.*

UNITED STATES OF AMERICA:

Hot Springs Commission.

HOT SPRINGS, ARK., *July 14th, A. D.* 1877.

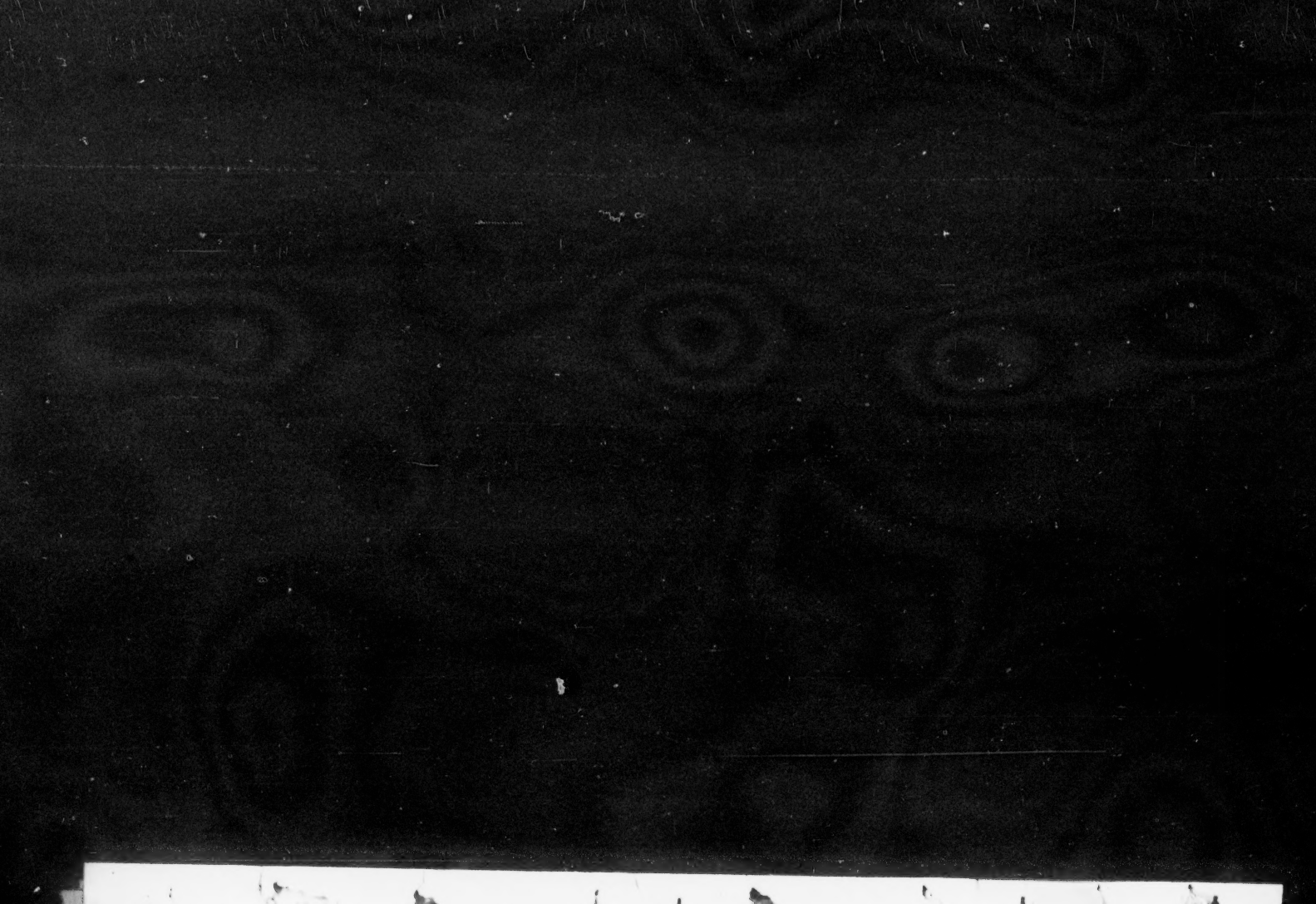
In the Matter of the Claim of HENRY A. BOOTH.

To the Hot Springs commissioners:

The petitioner, Henry A. Booth, now residing at Hot Springs, Garland county, in the State of Arkansas, presents that he claims the following-described tract of land, a map of which is filed herewith and made a part hereof, situated in the Hot Springs reservation, which tract is bounded as follows, to wit: Commencing at a point on Valley street at the northeast corner of said lot, thence on a line bearing west 90 ft., thence south 25 ft., thence east 90 ft., thence north 25 ft. to the place of beginning, being bounded on the north by the claim of M. J. Lewis, on the west by the Sumpter claim, on the south by the alley, on the east by Valley street, lying and being in the S. W. — S. W. — sec. 33, T. 2 S., R. 19 W.; that the
232 following-described improvements are situated thereon, to wit: A two-story frame building, 18 x 64 feet, the lower story being used as a store-room, the upper portion for sleeping apartments.

That they were erected by W. T. Bell in the month of January, in the year 1873; that they are of the value of $2,000.

The petitioner further says that he claems to be the owner of the said premises and entitled to purchase the same from the United States upon the following grounds, to wit, by virtue of purchase from said W. T. Bell, a quitclaim deed therefor being filed herewith. Your petitioner has been in peac-able possession of the premises since September 23rd, A. D. 1873, and has expended two hundred dollars



in improvements on said premises, and has occupied one of the sleeping apartments on said premises and the store-rooms below as a business house. Your petitioner paid A. O. Morgan more than one hundred dollars as rent on said premises, said Morgan claiming to be the agent or receiver for the United States; a lease from said Morgan is filed herewith. Your petitioner knows of no other persons claiming said premises unless it be W. H. Gaines, whom your petitioner has been informed claims all the land on both sides of the street south of the Hot Springs house.

The petitioner files herewith copies of the documents hereinbefore referred to and makes them a part hereof.

Wherefore he prays that the commissioners shall adjudge to him the right to purchase the said premises from the United States, and for other proper relief.

HENRY A. BOOTH.

(Here follows diagram marked p. 233.)

This indenture, made and entered into on the 2nd day of October, in the year 1876, by and between Albert O. Morgan, receiver of the Hot Springs property, appointed by the Court of Claims under the authority of the fifth section of the "Act in relation to the
234 Hot Springs in Arkansas," passed in the year 1870, party of the first part, and Henry A. Booth, of Hot Springs, in the county of Garland and State of Arkansas, party of the second part, witnesseth:

That, in consideration of the rent hereinafter reserved and the stipulations hereinafter contained, the said party of the first part, under the authority of said act and said court and on behalf of the United States, does hereby grant, demise, and to farm-let unto the said party of the second part a certain piece or parcel of land situated within the said Hot Springs reservation and described as follows, to wit, commencing at a point north 17° 30′ east of section corner post for sections 32 and 33, township 2 south, and sections 4 and 5, township 3 south, all in range 19 west and distant therefrom, 487 ft., thence bearing south 83° west 30 feet, thence south 77° 15′ west 84 ft., thence south 7° east twelve feet, thence north 83° east 120 ft., thence north 7° west 20½ ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of section 33, township 2 south and range aforesaid, all the above bearings being read from the magnetic meridian:

To have and to hold the same, with all the rights, privileges, and appurtenances thereto belonging, unto the said party of the second part, his heirs, executors, administrators, and assigns, for and during the term of one year, commencing on the 2nd day of October, 1876, and fully to be completed and ended, and the said party of the second part yielding and paying to the said party of the first part or his successor, as receiver, as rent for the same, the sum of $180.00 for the term aforesaid, payable in equal monthly installments of $15.00 each, in advance, on the 1st day of each month of said term, at the office of said receiver, in Hot Springs aforesaid.

And in consideration of the for-going demise it is covenanted and agreed between the parties as follows:

1st. The party of the second part shall not do or permit any waste of the demised premises during the term aforesaid or
235 during any additional time after the close of said term that the said party of the second part may remain in possession of the premises.

2. At the expiration of said term the possession of the premises shall be delivered to the party of the first part or his successor as receiver or to any other agent or representative of the United States who may by law become entitled to receive such possession.

3. If the party of the second part shall fail at any time to pay the rent aforesaid or to perform and fulfil any of the stipulations herein entered into on his part, or shall attempt in any respect to resist or obstruct the authority of the party of the first part as receiver or that of his successor in office, then, in any such case, the party of the first part or his successor may, at his own will and without demand upon or notice to the party of the second part or to any one occupying the premises, enter into and upon the premises without taking any legal proceedings to that end and summarily and, if necessary, forcibly eject and expel from the premises the party of the second part and all other occupants thereof and take full possession of the premises on behalf of the United States, without being held guilty of trespass and without prejudice to any other remedies available to him or to the United States in such case, either at law or in equity.

4. There are upon the demised premises the following improvements, to wit, one two-story building about 17 ft. x 60 ft., used as a store and dwelling. If during the said term the said building should be destroyed by the act of God or by fire not due to the fault of the lessee, or should in either of said ways be so damaged as to be unfit for habitation, then and in such case, if desired by the lessee, this lease shall be terminated; but, if not so desired, it shall remain in force as to the land and a proportionate rent for the land shall be paid, which proportionate rent shall be fixed by the party of the first part or his successor in office.

5. If at the expiration of the term aforesaid the party of the second part should desire a renewal of this lease for a period not
236 exceeding one year, the same may be so renewed by the endorsement by the receiver upon this lease.

6. No assignment of this lease nor any subletting of the demised premises shall be valid unless the consent of the party of the first part or his successor as receiver shall first have been obtained in writing.

7. The party of the first part or his successor as receiver may at all seasonable times enter into and upon the demised premises and any building thereon for the purpose of examining the condition thereof.

In witness whereof the said parties have executed this lease in

duplicate, signed their names, and affixed their seals to each part thereof the day and year first above written.

ALBERT O. MORGAN. [SEAL.]
H. A. BOOTH. [SEAL.]

Executed in presence of—
WILLIAM NELSON.
GEO. M. FRENCH.

Know all men by these presents that I, William S. Bell, of the city of Hot Springs, in the county of Garland and State of Arkansas, in consideration of the sum of $500, good and lawful money of the United States, to me in hand paid by H. A. Booth, of the city of Hot Springs, in the county of Garland and State of Arkansas, the receipt whereof is hereby acknowledged, do hereby convey, remise, release, and forever quitclaim unto the said H. A. Booth and his heirs all my right, title, claim, and interest to a certain lot or parcel of land situated on the land belonging to the United States known as the Hot Springs reservation of lands and more particularly
237 described as being situated in the city of Hot Springs on the west side of Main street, running due north and south, fronting 18 ft. on said street, running 80 ft. back west from said street, and bounded on the east by said Main street, on the south by the Valley house, built by Maginnis and occupied at this time as the court-house and clerk's office of Garland county; on the west by the land of the reservation known as the Sumpter claim, and on the north by the lot occupied at this time by B. Hurd & Co., together with the two-story house situated thereon; to have and to hold the above sold and relessed premises to the said H. A. Booth and his heirs to his — their use and behalf forever.

In witness whereof I, the said William T. Bell, have hereunto set my hand and affixed my seal this the 23rd day of September, 1876.

W. T. BELL. [L. S.]

STATE OF ARKANSAS, } ss:
*County of Garland,* }

I, Zeba Belding, county clerk, circuit clerk, and *ex officio* recorder in and for the county of Garland aforesaid, do hereby certify that the foregoing deed was filed in my office for record on the 23rd day of November, A. D. 1876, at 12 o'clock m., and the same is now duly recorded, with the proper acknowledgements and certificates thereon, in Record Book B, on pages 447 and 448.

In witness whereof I have hereunto set my hand and affixed the seal of my office this 21st day of December, A. D. 1876.

[OFFICIAL SEAL.] ZEBA BELDIN,
*Clerk and ex Officio Recorder.*

238 STATE OF ARKANSAS, }
*Garland County.* }

Be it remembered that on this — day of September, 1876, at the county aforesaid, before Mr. T. P. Crim, an acting and duly commissioned justice of the peace for said county, personally came and ap-

peared William T. Bell, grantor in the above deed, to me personally well known, and acknowledged that he voluntarily executed and delivered the foregoing deed for the uses, purposes, and considerations therein expressed, and desired the same to be so certified.

Given under my hand this the 3rd day of October, 1876.

T. P. CRIM, *J. P.*

Endorsed: Quitclaim from W. T. Bell to H. A. Booth. Filed for record at 12 m., November 23rd, 1876. Z. Beldin, clerk. Paid $1.50.

This agreement of lease, made this 11th day of April, 1874, between Wm. H. Gaines, as lessor, and McCarthy & Bell, as lessees, witnesseth:

That the lessor, for and in consideration of the covenants hereinafter agreed to be performed by the lessee-, has leased and demised unto the lessees a certain lot or parcel of land lying and being situate in the town of Hot Springs, in the county of Garland, in the State of Arkansas, and described as follows, to wit, the space between the two (2) log buildings situated on the west side of the street near the south end of Hot Springs valley, heretofore known as log row or smoky row, embracing a froot on the west side of said street of nineteen feet, more or less, and running back west from and at right angles with said street the same width to the Sumpter fence; to have and to hold the same unto the said lessees, McCarthy & Bell, from the 10th day of April, 1874, until the 10th day of April, 1875, to be renewed from year to year until the title to the Hot Springs quarter section of land is settled, if the lessees or their legal repre-
239 sentatives shall so desire.

And the lessees covenant and agree to pay to the lessor or his legal representatives as a rent on the above-named premises the sum of one hundred and eighty dollars per annum in installments of forty-five dollars each on the 10th days of April, July, October, and January for each and every year during the continuance hereof, and to surrender peac-able possession of said lot to the lessor or his legal representatives at the expiration of this lease. All buildings or other improvements that may be erected on said lot by the lessees during the continuance hereof may be removed therefrom by the lessees or their legal representatives at any time within thirty days after the expiration of this lease; provided, however, that the lessor shall have a lien on all such buildings and improvements to secure the payment of the rent hereinabove provided for, and no such building and improvements shall be removed from said lot while said rent or any part thereof shall remain due and unpaid, and if the lessees or their legal representatives shall make a default and be in arrears with said rent or *doy* portion thereof for fifteen days at any one time the lessee or his legal representatives may enter upon the premises, eject the lessees or their legal representatives therefrom, and repossess himself of the same without notice or other legal process. This lease shall not be assigned nor the premises underlet

without the written consent of the lessee or his legal representatives being first endorsed hereon.

Witness the hands and seals of the parties, at Hot Springs, this 11th day of April, 1874.

WM. H. GAINES.
McCARTHY & BELL.

Endorsed: William H. Gaines to McCarthy and Bell. Lease, original. Due quarterly, $45.00. The within paid for the quarter beginning April 11th, 1874. A. Curl, agent for Gaines. Given in testimony in claim of Henry A. Booth, No. 248, before the Hot Springs Commission. A. H. Cragin, ch.

240 Before the Hot Springs Commission.

In the Claim of HENRY A. BOOTH, No. 246, Consolidated with Claim No. 784.

*Brief for Booth.*

In the spring of 1874 Bell & McCarthy built a two-story frame house, 20 x 65 ft., upon the land claimed, dissolved partnership, and McCarthy surrendered his interest to Bell. On the 23rd day of September, 1878, Bell sold his possession of and improvements on the land to petitioner for $500. The house is worth $900. Petitioner and those under whom he claims have occupied the tract continuously since the construction of the house.

On the 11th day of April, 1874, when this land was unoccupied and unimproved, Bell & McCarthy accepted from W. H. Gaines a lease for a year, with covenants of renewal from year to year "until the title should be settled."

Petitioner in 1876 attorned to the Government.

The adverse petitioners, W. H. and Maria Gaines, never had any interest in the improvements nor any actual occupancy of the land, and we submit that petitioner has the preperence right to purchase.

MURPHY & WOOD,
*Attorneys for Petitioner.*

In the Claim of HENRY A. BOOTH. No. 248.

FEBRUARY 13TH, 1878.

This claim is consolidated with the claim of Wm. H. and Maria Gaines.

HENRY A. BOOTH sworn and examined.

Examined by Mr. MURPHY:

Q. State your name, age, and residence.

A. Henry A. Booth; age, twenty-nine, and reside at Hot Springs.

241 Q. Is that a correct description of the land embraced in your claim (reading the petition)?
A. I think it is.
Q. What improvements are on that land?
A. There is a storehouse, a two-story frame building, upon it. It was erected in the spring of 1874 by Bell & McCarthy. When they dissolved partnership Bell took the building, and he sold it to me.
Q. Under the arrangement between Bell and McCarthy the house became Bell's?
A. Yes, sir.
Q. Did you file the original deed from Bell with your petition?
A. Yes, sir.
Q. This deed was a conveyance of the lot you claim?
A. Yes, sir.
Q. What is the breadth of this building?
A. About 20 ft. and the length from 60 to 65 ft.
Q. Any enclosure around it?
A. No, sir.
Q. Can you state the value of your house?
A. I paid Mr. Bell $500 in greenbacks for it.
Q. Have you improved the house any since you bought it?
A. Yes, sir; put two floors in, shelves, fixtures, various things, and papered and painted it.
Q. Did you buy this after the decision?
A. Yes, sir; I bought it either in September or October, 1876.

By Com. COBURN:

Q. What are the improvements worth now?
A. The fixings and everything, I suppose, $900. It is in good repair.

242 By Mr. MURPHY:

Q. Did you see the land before that house was constructed upon it?
A. No, sir.
Q. Do you know how Bell & McCarthy came in possession?
A. By a lease from Gaines.
Q. Have you that lease?
A. Yes, sir.

Lease offered in evidence and marked Exhibit 7, dated April 11th, '74.

Q. Do you know whether Major Gaines had actual possession of that ground or not at the time of the lease?
A. I do not.

Cross-examination by Mr. BENJAMIN:

Q. You purchased this since the decree?
A. I expect I did; the deed will show.
Q. You had no actual possession at the time of the decree?
A. No, sir.

By Mr. MURPHY:

Q. Did you rent this land from the receiver of the United States?
A. Yes, sir; his lease is attached to the petition.
Q. You paid him rent for it?
A. Yes, sir.
Q. How much?
A. I paid until the 2nd day of January, and then the United States soldiers, about eighteen or twenty men, occupied the building. I went east, and when I came back here the soldiers had vacated the building. I spoke to Mr. Morgan about the balance of the rent until the time this bill passed, and says he: "I cannot give you a receipt for it," but, says he, "It will show all right on the books."

243 Q. Did you in this purchase get all the improvements?
A. Yes, sir; I bought all his right and title and interest there.

By Mr. BENJAMIN:

Q. You have no claim except what you got through this deed, and you derive your claim through it?
A. Certainly.

By the CHAIRMAN:

Q. I notice in the deed from Bell to you this lot is described as 18 ft. in front and running back 70 ft. I notice you claim 25 ft. in front. Was it a mistake in the deed or have you occupied more ground since?
A. That is an old well taken in about the center of the alley. It was put in by Bell and McCarthy, and people about used to use it. The alley is on the south side, between the court-house and the building.
Q. And you claim six or seven feet off this alley?
A. Yes, sir; takes in the well.

JOSEPH M. GREEN sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.
A. Joseph M. Green; age, thirty-four, and reside at Hot Springs.
Q. Do you know the land claimed by Henry A. Booth?
A. Yes, sir.
Q. What improvements are upon it?
A. A two-story frame house.
Q. Anything else?
A. A well.

Q. What position does this well stand to the house?
244 A. It stands south side of the house and occupies probably three or four feet of ground.
Q. Who built that house?
A. McCarthy & Bell. I was the builder. It was built in the latter part of April or first part of May, 1874.

Q. Was the land enclosed at that time?
A. No, sir.
Q. How long had you known that land before that?
A. About a month.
Q. And this was the first improvement you ever saw upon it?
A. Yes, sir.
Q. What is the house worth?
A. I presume in the neighborhood of $1,000.
Q. After you built the house who occupied it?
A. McCarthy & Bell.
Q. Do you know when Booth, the petitioner here, bought from them?
A. Yes, sir.
Q. Who occupied it after he bought?
A. He occupied it quite awhile himself. Then the United States troops occupied it.
Q. Who has occupied it since then, either in person or by tenant?
A. Mr. Booth.

Cross-examination by Mr. BENJAMIN:

Q. When you put that building up, was there a building north of it?
A. Yes, sir.
Q. How far from it?
A. Some two or three feet.
245 Q. And one right south of it?
A. Yes, sir.
Q. And this was put up between the two houses?
A. Yes, sir.
Q. Who did those houses belong to at that time?
A. I could not tell you. I think they were Major Gaines'.
Q. These houses have been torn down since?
A. Yes, sir; they were log cabins.

By Mr. MURPHY:

Q. State if McGinnis did not build the one just south of it.
A. Yes, sir.

Endorsed: No. 248. In the claim of Henry A. Booth. Testimony of Henry A. Booth — Joseph M. Green, given before the Hot Springs Commission. A. H. Cragin, ch.

In the Claim of HENRY A. BOOTH. No. 248.

TUESDAY, *October 7th*, 1879.

At this time comes the petitioner, Henry A. Booth, and the commissioner having heard and considered the petition and testimony, and also the testimony in claim No. 784, Wm. H. Gaines and Maria Gaines, do say and find that the claim of the petitioner accrued prior to the 24th day of April, A. D. 1876, by reason of the use, occupation, and improvement of the premises described in the peti-

tion, and that the petitioner is the owner and entitled to the possession of the improvements made thereon.

And the commission, having had the premises surveyed and having inspected and caused the same to be platted, numbered, and scheduled, and having appraised the same as provided by law, and being sufficiently advised of the premises, do further say and find that the petitioner is entitled to purchase from the United States the following-described land in Hot Springs, to wit: Lot numbered ten, in block numbered seventy-seven, for the sum of three hundred and ninety-five dollars, that being the appraised value thereof.

246 It is therefore ordered and adjudged that the said Henry A. Booth is entitled to purchase said lot numbered ten, in block numbered seventy-seven, for the sum of $395.00, and that a certificate be issued to him for the right to purchase the same, containing 2,180 feet.

247 UNITED STATES OF AMERICA, }
*Eastern District of Arkansas.* }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 24th day of October, anno Domini one thousand eight hundred and eighty-seven, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On November 11th, 1887:

*No.* 647. *Decree.*

Now, on this day, came the said plaintiffs, by their solicitors, M. W. Benjamin and R. G. Davies; and also comes the said defendant, D. C. Rugg, by G. W. Murphy, Esq., his solicitor; and the special master having heretofore filed his report herein, and this cause now coming on for hearing, and the court having heard the argument of counsel and being now sufficiently advised as to the further decree to render herein—

It is ordered, adjudged, and decreed that all the exceptions of the defendant to the master's report be, and the same are, overruled; thereupon the court finds and states the account between the plaintiffs and defendant ar follows: To amount due said plaintiffs for rent, according to the terms of the lease, from the date of award to *to* the date of filing of the bill in this case, and interest, ten hundred and sixteen dollars and thirty-eight cents; to amount due him since said date and until the filing — master's report, and interest annually, nine hundred and forty-five dollars and eighty-five cents; to rent to date of this decree, two hundred and forty-four dollars and forty-two cents, amounting in the aggregate to the sum of two thousand two hundred and six dollars and sixty-five cents.

By amount due the defendant for taxes paid and interest, four hundred and eighty-nine dollars and ninety-three cents; by amount of purchase-money paid by him to Government for said lot and inter-

circuit judge, presiding and holding said court, the following proceedings were had, to wit:

251 On April 16th, 1888:

No. 647. Come the complainants, by Benjamin and Davies, Esqs., their solicitors, and file herein their motion to strike from the files the motion to set aside decree.

Which motion is as follows:

U. S. Circuit Court, East. Dist. of Arkansas.

GAINES and WIFE
*vs.*
D. C. RUGG.

Plaintiffs move to strike the motion to set aside decree heretofore rendered from the files of this court—

First. Because their petition does not ask to be released from any fraud, misrepresentation, or mistake of plaintiffs or their attorneys, but from the neglect and ignorance of petitioner himself and his attorneys, which relief should never be granted.

Second. Because the case has already been appealed to the Supreme Court of the United States and is now out of this court, and this court has no jurisdiction to set aside a decree already appealed to the Supreme Court of the United States.

Third. Because the term in which the decree was rendered has elapsed and the court is now holding a new term.

Wherefore they pray that the motion to set aside decree may be stricken from the files of this court.

M. W. BENJAMIN.
R. G. DAVIES.

(Endorsed:) Filed April 16th, 1888. Ralph L. Goodrich, clerk.

And on May 4th, 1888, the following proceedings were had:

252 No. 647. Comes the defendant, by John McClure, Esq., his solicitor, and files herein allowance of supersedeas, signed by Samuel F. Miller, — Supreme Court of United States.

Which allowance is as follows:

In the Circuit Court of the United States, Eastern District of Arkansas.

WILLIAM H. GAINES and WIFE
*vs.*
D. C. RUGG. } No. 647.

This day appeared the plaintiff-, by M. W. Benjamin and U. M. Rose, their attorneys, and the defendant, by John McClure, his attorney, and the defendant having prayed permission to be allowed to file a supersedeas bond herein and for time within which to file the same—

It is considered, ordered, and adjudged that the defendant have

until June 1st, 1888, to file a supersedeas bond in such amount as is stated in the decree heretofore rendered in this cause, and the plaintiff- at the time excepts to said order and ruling.

April 21st, 1888.

SAM'L F. MILLER,
*Justice Sup. Ct. U. S.*

(Endorsed:) Filed May 4th, 1888. Ralph L. Goodrich, clerk.

And on May 14th, 1888, the following proceedings were had, to wit:

No. 647. Comes the defendant and files herein his supersedeas and cost bond.

Which bond is as follows:

253 In the United States Circuit Court, Eastern District of Arkansas.

D. C. RUGG *et al.*, Appellants,
*vs.*
WM. H. and MARIA GAINES, Appellees. } 647.

*Supersedeas Bond.*

Whereas the appellant, D. C. Rugg, is about to take an appeal from the judgment rendered in the above-entitled cause in said court on the 11th day of November, 1887, being the October term of said court, in favor of said appellees in said suit therein pending in equity; and whereas said decree and judgment fixes the amount of the bond required to supersede said decree at the sum of thirty-five hundred dollars ($3,500.00); and whereas said decree fixes the amount of bond for costs required at the sum of two hundred and fifty dollars ($250.00); and whereas the appellant *deseris* to supersede said judgment and decree and secure said costs: Now, we, D. C. Rugg, as principal, and I. L. Butterfield and C. N. Rix, sureties, hereby undertake and covenant with the appellees that said appellant will pay to the appellees all damages that may be adjudged against said appellant on appeal, not exceeding the amount of $3,500 above mentioned, and also that he will satisfy and perform said judgment and decree in case it shall be affirmed and any judgment or order which the supreme court may render or order to be rendered by this court, and that said appellant will pay all costs of appeal if the same shall be adjudged against him.

Witness our hands and seals this 11th day of May, A. D. 1888.

D. C. RUGG. [SEAL.]
I. L. BUTTERFIELD. [SEAL.]
C. N. RIX. [SEAL.]

Signed and sealed in our presence—
W. W. WRIGHT.
S. A. BUCHANAN.

(Endorsed:) Filed May 14th, 1888. Ralph L. Goodrich, clerk.